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Africa Energy and Utilities

Tax Guide 2020

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Foreword

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The beginning of a new decade presents an exciting future for the Oil and Gas industry. This will be shaped by technology, government policies and the state of the global economy. COVID 19 has been a disrupter and has significantly reduced demand for oil and gas. Final Investment Decisions on Projects are on hold as companies are looking to manage their costs and cashflows. The focus is largely to maintain current production levels with minimal investment and implement cost reduction strategies in the short to medium term. Uncertainty around government regulations has also contributed to the hesitancy to commit additional resources.

In our 2019 Africa Energy and Utilities Guide, the outlook for the Africa Oil and Gas Industry largely correlated with the global trend, this has continued for yet another year. Fossil fuels will remain the main source of revenue for Oil producing countries in Africa in the short to medium term. However, from a longer-term perspective, African countries should expect a decline in fossil fuel demand as the global energy transition continues to evolve and develop.

Africa faces large demand for power and utilities as commercial activities begins to move toward pre-pandemic levels. The huge infrastructural gap poses opportunities for investors driven by favourable policies, tax incentives and conducive business environment.

As the traditional energy models continue to be disrupted, we expect to see majority of such investments channeled toward green energy as renewable energy is estimated to dominate global power demand by 2050.

At PwC, we have watched these industry developments in both spaces and analyzed the effects from the perspective of how they will impact our clients. In a bid to solve important problems and build trust in the society, we have developed ways in which we can best help companies prepare and manage changes, using our expertise and wealth of experience.

This review of activities and developments in the African Energy and Utilities industry from a tax and regulatory standpoint is in the Third edition. If you wish to have a deeper conversation around the information and developments presented in this publication, please contact us.

Algeria

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Oil and Gas Sector

Brief overview of the Oil & Gas development in Algeria

Algeria's first commercial oil discovery occurred in 1956 with production beginning in 1958. Algeria's proven reserves is currently 12.2bn barrels and crude oil production of 1.026m bpd. The oil & gas sector is the backbone of the economy, accounting for about 20% of the GDP, and 85% of total exports. Other natural resources of the country include iron ore, phosphates, uranium and lead. The country is considered the leading natural gas producer in Africa. All the proven oil reserves of the country are held onshore, and there has been limited offshore exploration.

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

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

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

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

Political Updates

Algeria has been characterised by a large popular protest movement since February 2019, people of all community segments have been protesting on the street advocating for structural and political changes in the country.

Presidential elections were organised in December 2019 and have resulted in electing a new president for Algeria (M. Abdelmadjid Tebboune) for a 5 years term.

Economic Updates

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

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

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

The country's GDP for 2019 grew by approximately 1.3%. The election season is also likely to further delay the fiscal consolidation that had been programmed for 2019, worsening the fiscal deficit to an expected 12.1% of GDP and increasing the risk of a sharper adjustment down the road. On the external front, the current account deficit is expected to widen to 8.1% of GDP.

Of the major Economic changes occurring recently, the new developments of the finance act for 2020 which provides for the abrogation of the 51/49 rule except for strategic sectors of the Algerian economy. The list of these strategic sectors will be determined later by regulation.

The finance act for 2020 authorises the use of external financing for strategic and structuring projects for the national economy, from development financial institutions after consulting competent authorities.

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

Fiscal regime

Standard tax regime

Resident companies

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

- Corporate Income Tax (IBS) is at the rate of 19% for production activities, 23% for construction and public works activities, and 26% for services and other activities.
- Tax on professional activity (TAP) is at the rate of 1% for production activities. However, this tax is fixed at 2% for all other activities. However, TAP rate is set at the rate of 3% concerning hydrocarbon pipeline transport activity.
- Value-added tax (VAT) is at the rate of 19% or 9% (except any specific exemption).
- Branch tax is set at the rate of 15% calculated on net profit after IBS subject to more favorable rates provided by DTT.

Non-resident companies

In the absence of a double tax treaty (DTT), the basic principle that governs taxation of non-resident entities is that such entities are taxable in Algeria on their Algerian-source income regardless of the location the work is carried out, provided only that the same are rendered or used in Algeria.

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

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

Regulatory Framework

Key regulators in the oil & gas industry include:

Key regulators in the sector consist of the following bodies:

Ministry of Energy

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

National Agency for Hydrocarbon Resources Valorisation (ALNAFT)

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

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

Hydrocarbons Regulatory Authority (ARH)

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

Hydrocarbons Regulatory Authority (ARH)

Exploration and production agreements provided by the 1986 hydrocarbons law, includes joint ventures, partnerships, production sharing, and risk service contracts. Whereas, the 2005 hydrocarbons law includes two main instruments:

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

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

Law N° 05-07 provides that the contract follows an exploration period of a maximum of 7 years and an exploitation period of a maximum of 25 years (however, if oil is discovered in the first 7 years, the exploitation period will increase proportionately). When the exploitation period is concerned with gas deposits, this period could be extended five (5) more years.

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

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

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

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

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

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

Local Content Regulation

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

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

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

Taxation regime

Direct Taxation

The applicable tax regime is determined by the date of conclusion of the contract and by the Zone in which the field is located. Thus, the Algerian fiscal regime applicable to oil & gas upstream industry, is governed either by Law N° 86-14 or by Law N°. 05-07 (as amended and supplemented).

Key taxes under the former regime (Law N° 86-14)

Royalties

Royalties on gross revenues are paid by Sonatrach for the whole production. The standard royalty rate is 20%, however it can be reduced to 16.25% or 12.5% for Zones A and B respectively. Sonatrach is liable for the monthly payment of the royalty (articles 39, 40, 41 of the law N° 86-14, as amended).

Income tax

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

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

Local Income Taxes

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

Hydrocarbon Tax Regime

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

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

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

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

Key taxes applicable under Law N°. 05-07, as amended

Surface tax

The surface tax is an annual tax paid per square kilometer of the licensed area. It is not tax deductible and the tax are dependent upon the territorial Zone (A, B, C and D) the operations are conducted.
Unconventional oil & gas exploration and production surface taxes are calculated in line with Zone A fees. The rates of the surface tax per square kilometer are in Algerian Dinars (DZD) as follows:

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

Royalty

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

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

BOE: Barrel of Oil Equivalent.

Petroleum Income Tax (PIT)

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

Contracts agreed before 20 February 2013

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

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

Contracts agreed after 20 February 2013

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

R1 = Sum of the gross profit discounted at a rate of (10%)/ Sum of investment expenses discounted at a rate of (10%) The coefficient (R2) is the ratio between the sum of the Gross Profit discounted at a rate of 20% from the first year the contract entered in force up to the year preceding the determination of the rate of PIT (i.e. Accumulation 20%) and the sum of the Investment Expenses discounted at the same rate (i.e. 20%) from the first year the contract entered into force up to the year preceding the determination of the rate of PIT during the same period (i.e. Cumulative 20%).

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

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

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

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

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

Additional profits tax (APT)

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

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

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

Tax on flaring

ALNAFT may grant a flaring authorization for up to 90 days to allow the operator undertake gas flaring although, it is against the law. The tax is levied at AD 8,000 per thousand normal cubic meters (nm3) and is not tax deductible. This amount is annually indexed by ALNAFT and notified to the contractor. Concerning remote and isolated areas, specific pricing conditions are fixed by regulation. Foreign companies are exempted from the flaring tax, quantities of gas flared during research period as well as the quantities flared during start-up period of production (commissioning phase).

Key taxes and measures applicable under Law°19-13:

Surface tax

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

The rate differs depending on the phase of the project perimeter related to exploration, retention, or exploitation, and the duration concluded in each phase.

This tax is declared and paid annually during the term of the concession or oil contract from the effective date of the contract.

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

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

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

Period	Search period		Exceptional extension period/ Period of extension / Period of Retention	Exploitation Period
	From 1st to 4th year included	From 5th year to 7th year included		
Unit Amount in DZD/km²	7.000	14.000	40.000	30.000

Hydrocarbon royalty

The royalty introduced in the new law 19-13 in Articles 167 to 176 is applied on the quantities of hydrocarbon extracted payable to the public treasury on a monthly basis. The taxable base of the royalty is set on the value of the quantities of hydrocarbon extracted from the exploitation perimeter computed at the measurement point, excluding those quantities consumed for production purposes, the quantities lost and the quantities reinjected into the hydrocarbon deposit.

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

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

Tax on hydrocarbon revenue

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

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

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

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

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

Articles 177 to 187 provides that the tax on petroleum revenues (TRP) has been replaced by the tax on hydrocarbon revenues (IRH where the key difference between the two is the basis of income calculation. As of the new introductions, the investment instalments are no longer computed progressively.

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

Income tax

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

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

The income tax is payable to tax authorities within the same deadline of the annual tax return submission. In terms of the application scope per contract, the income tax is entitled for financial years' incomes performed by the National Company in execution of the upstream

concessions, production sharing contracts, risk services contracts, or by the contracting parties in the case of a participation.

Tax on the remuneration of foreign co-contractors

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

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

Flat-rate royalty on anticipated production:

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

The royalty is declared and paid monthly by the National Company in the case of an upstream concession, a production sharing contract or a risk service contract and by the contracting parties in the case of a participation contract. The said royalty will be regularized by the National Company or by the Contracting Parties no later than 1 March of the year following the year concerned.

Other tax-related provisions

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

Moreover, in section 1 of Chapter 30 of the new hydrocarbon law, it is provided for the upholding of the Flaring Tax, this non-deductible tax, is entitled at an amount of DZD 12,000 per thousand normal cubic meters (Nm3).

Duration of the hydrocarbon contracts under law 19-13

Articles 56 and 57 of the new law governing. hydrocarbon activities provide details on the duration of hydrocarbon contracts. Thus, taking into account the research and exploitation phase, which may not exceed 7 years, the average duration of all hydrocarbon contracts is set at 30 years. Nevertheless, contracts for the exploitation of deposits already discovered are set at 25 years. In both cases (with or without a research and exploration phase), this period may be extended for another 10 years.

Transitional measures and provisions

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

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

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

Redefining the roles of government agencies

The As per the new dedicated Hydrocarbon law for 202019-13, provides that ALNFAT will exercise its authority exclusively over upstream research and exploitation activities, while the ARH will have a more prominent role with regard to downstream activities. It is also important to note that the new law gives the exclusive right onto the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and the Hydrocarbon Regulatory Authority (ARH)ALNAFT and ARH to terminate a contract signed with a foreign or national partner failing to comply with the required clauses and standards, without going through the Minister of Energy..

On the other hand, ALNAFT will no longer be a party to hydrocarbon exploration and/or exploitation contracts. According to the new law, As a result, ALNAFT no longer has the same executive power as in the previous hydrocarbon laws but rather grants. On the contrary,

the 19-13 law gives ARH more powers. In addition, ALNAFT will no longer be a party to hydrocarbon exploration and/or exploitation contracts.

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

Main taxes under the general tax law

Withholding tax

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

Non-resident entities performing service contracts in Algeria are subject to the WHT regime. The 3024% WHT, which encompasses the IBSCIT, the TAP, and the VAT, is required to be levied on services only. The calculation base is the gross amount of the service(s) invoiced.

Please note that, since 2017, contracts that had been taxed under the 24% WHT are also subject to the Algerian VAT when its basis of calculation benefited from a reduction in the rate or rebates as provided for by the local tax legislation or the DTTs (i.e. software license contracts, international lease agreements, etc.).

However, the complementary finance law for 2020, increase in the withholding tax rate applicable to foreign companies involved in service contracts in Algeria to 30%.

Services

Foreign companies performing services in Algeria are subject to Withholding tax, levied at the rate of 3024% on remuneration of (consulting fees, management fees, services, remuneration, lease equipment, royalties etc.).

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

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

Dividends

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

Royalties

Subject to double taxation treaties provisions, the general withholding tax on royalties is 3024%.

Interest

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

Nevertheless, withholding tax rates may be reduced where the recipient is a resident of a country that has concluded a double tax treaty with Algeria. Algeria has signed 32 double tax treaties.

Thin capitalisation and Transfer Pricing

There are no thin capitalization rules in Algeria.

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

Double Tax Treaties (DTT)

Algeria has concluded 32 DTTs. Since 2015, 3 DTTs have entered into force:

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

Please note that Algeria and Netherland have signed a DTT on May 2018.

Indirect

Value added Tax

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

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

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

Customs and Excise Duties

Customs rights rates in Algeria are as follows: 0%, 5%, 15% and 30%. This is in addition to a maximum rate of 60% provided for by Article 80 of the Finance Law for 2018. Subject to this, article 109 of the same law has provided another right called a “solidarity contribution” which is applied on the customs value of all importations at the rate of 21%.

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

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

It is important to note that Article 2 of the Complementary Finance Law for 2018 has provided for an additional temporary safeguard right applicable to importation of goods into Algeria. The rate for this additional right is set between 30% and 200%.

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

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

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

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

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

FL for 2021 provides also for the extension of the said reduced customs duty rate to young entrepreneurs benefiting from financial assistance and investment incentive arrangements, most precisely: CNAC, ANSEJ, and ANGEM.

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

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

Other Taxes

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

Capital Gains tax

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

Payroll related taxes

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

- Less than DZD 120.000 => 0%
- From DZD 120.001 DA to 360.000 DZD =>20%
- From DZD 360.001 to DZD 1.440.000 =>30%
- Exceeding DZD 1.440.000 => 35%

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

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

Additionally, training tax and apprenticeship tax are each levied at the rate of 1% of the payroll cost. Moreover, the SFL introduces a PIT exemption for monthly salaries below DZD 30,000. Salaries, allowances, emoluments, wages, pensions and life annuities of less than 30,000 DZD per month are excluded from the taxable base for PIT. Other categories of income ranging below DZD 30,000 monthly are still subject to the progressive scale tax rate. No payroll taxes are levied in Algeria.

Other provisions introduced by the FL for 2021:

- Introduction of the possibility to offset PIT overpayments against future instalments until fully absorbed or otherwise request for their refund;
- Suppression of the 20% reduction for PIT purposes on remunerations paid under a consulting or a training contract;
- Introduction of a new income threshold for the application of the additional PIT payroll relief for people with disabilities. The new threshold ranges between DZD 30,000 and DZD 42,500 (instead of 40,000 DZD) applicable to workers with motor, mental, vision impairment or deaf-mute disabilities, as well as retired workers under the general regime;
- Introduction of a permanent PIT exemption for export operations carried out by natural persons generating foreign currency. The foreign currency revenues have to be generated from goods and services export transactions in order to be eligible for the exemption;
- Introduction of an exemption of allowances related to special residence and isolation conditions. The new exemption is granted to taxpayers within a 70% limit of the basic salary. However, no specific definition of "special residence and isolation conditions" is provided by LF 2021.

Training and apprenticeship taxes

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

Social security contributions

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

Land taxes, Stamp duties etc

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

Taxation of Oil Field Services (OFS) companies

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

- Tax on Professional Activity (TAP – 2%) calculated on the collected turnover;
- Corporate income tax (IBS – 26% for services) since the Complementary Finance Law for 2015. However, some oil services activities are subject to CIT at the rate of 23%, since their activities are assimilated to construction works i.e. oil & gas drilling.
- Income tax / Tax on wages (Personal income tax, and social security contributions);
- Value added tax (VAT – 19% since January 2017).

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

Tax (CIT) instalments, withholding taxes, TAP and VAT.

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

Deemed Profit Taxation

Algerian tax legislation provides for a single deemed profit tax (Impot forfaitaire Unique "IFU") applicable for company's natural persons which turnover per year, does not exceed DZD 30 15 million (equivalent to USD 300 113 000). IFU rates is established as follows:

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

As of the new provisions of the FL2020, IFU regime is only applicable on natural persons unlike the previous arrangements that included companies as well. Hence IFU does not applies for neither to OFS but does not concern E&P companies.

Incentives in the oil & gas industry

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

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

In this respect, preferential tax rate is granted to encourage exploring complex oil & gas deposits such as the reduced rate of royalty of 5% instead of 10% in the general case.

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 realized during the year;
- All other taxes on income and result of the exploitation due to the Government, local authorities and all public entities;
- All taxes on distribution of income (i.e. including the 15% branch remittance tax);
- Value Added Tax (VAT), on equipment imported or purchased locally by the Contractor or for its account, and used directly for oil activity purposes;
- VAT on services, including surveys and leasing, rendered by the Contractor or for its account;
- Customs duties but limited to the imported equipment used for oil activity purposes.
- Bank domiciliation tax on imports of services dedicated for upstream activities;

Downstream incentives

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

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

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

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

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

Compliance Requirements

Annual corporate income tax (ICR) return

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

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

Concerning the OFS companies, they remain liable to file the CIT return before 30 April of each fiscal year. CIT is calculated in accordance with the following rates (article 2 of complementary finance act for 2015):

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

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

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

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

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

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

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

Monthly G 50 forms

In Algeria, withholding tax on wages paid to employees, or on remunerations paid to non-resident services suppliers, are withheld at source by the employer or by the beneficiary of the services, while paying the remunerations, and the amount withheld must be declared on a monthly basis under the G 50 tax return. This form must be filed within the 20 days following the end of the month of the remuneration payment.

Lack of filing

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

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

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

Filing marked “none” → Application of a fiscal fine of DZD 500 (art 360 of the CIDTA).

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

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

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

Annual declaration of wages and salaries (G29)

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

Statute of limitation

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

Tax audits

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

Power and Utilities Sector

Overview of the Power and Utilities development in Algeria

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

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

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

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

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

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

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

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

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

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

Legal Framework

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

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

Regulatory framework

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

To adapt to this legislative framework, the public industrial and commercial company Sonelgaz, has restructured into a holding company under a joint-stock company (SPA). The State remains the majority shareholder of the Sonelgaz SPA holding company at 100%. Sonelgaz SPA may exercise in Algeria and abroad all activities that contribute directly or indirectly to its purpose, including exploration, production and distribution of electricity.

Tax regime

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

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

Realization phase of the investment

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

Investment operationalization phase

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

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

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

Angola

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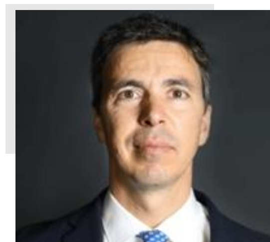

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Oil and Gas Sector

Brief history on Oil & Gas development in Angola

Angola is Africa's second largest oil producer, producing up to 1.2 million barrels per day (bpd) in 2020, however, this shows a decline in oil production from 1.3 million barrels per day (mb/d) registered in 2019. Angola, exports more than 80% of its crude oil production, in this sense, regardless of the 2020 COVID-19 disruption causing delays and cancellations on the oil and gas sector, Angola has moved forward with development of large-scale oil and gas infrastructure buildings, which includes the launch of US$60m oil platform construction project and the construction of a gas processing plant with capacity to process 400m cubits feet of natural gas per day.

Due to COVID-19, it is possible that Angola could be facing US$20bn or more in lost export revenue in 2020 since oil prices are recording approximately US$40/bbl. down from the pre-COVID-19 budget benchmark price of US$55/bbl. Angola has seen a loss of 10.53% as a percentage of GDP.

Although the impact of COVID-19 on gas has been less severe than that on oil, in 2020, Angola's gas exports have declined by 8%. Natural gas prices have seen a decrease over the year with a fall in demand taking effect in an already oversupplied market.

Africa Oil and Gas Review 2020 *"Energising a new tomorrow"*, PwC. Link: https://www.pwc.co.za/en/assets/pdf/africa-oil-and-gas-review-2020.pdf

World Bank - Country Overview, Angola 2020. Link: https://www.worldbank.org/en/country/angola/overview

Africa Oil and Gas Review 2020 *"Energising a new tomorrow"* , PwC. Link: https://www.pwc.co.za/en/assets/pdf/africa-oil-and-gas-review-2020.pdf

Africa Oil and Gas Review 2020 *"Energising a new tomorrow"*, PwC. Link: https://www.pwc.co.za/en/assets/pdf/africa-oil-and-gas-review-2020.pdf

Economic Updates

Despite significant progress on macroeconomic stability and structural reforms, Angola is still suffering the effects of lower oil prices and production levels, with a gross domestic product (GDP) contraction around 4% in 2020. ,

Growth is projected to recover to 2.6% in 2021 with recovery of oil prices and production, but according to the Angolan National Petroleum and Gas Agency (ANPG), significant capital loans are required in order to boost reserves by 40-57 Bbo of crude in order to maintain production levels above 1.0 mmbl/d.

The oil sector accounts for one-third of GDP and more than 90% of exports. The transformation of a state-led oil economy to a private-sector-led growth model is a complex and long-term process and the oil sector will continue to play an important role during this transition period. 5

Macroeconomic stability has been restored and maintained through a more flexible exchange rate regime, restrictive monetary policy, and fiscal consolidation. The government has delivered on several key reforms since taking office in 2017, including the new law on Preventing and Combating Money Laundering, as well as the privatization law, the setup of a one-stop window for investors to improve the business climate, and the establishment of a social protection registry to protect the most vulnerable from the reforms.

These reforms are already producing some positive results, as Angola tapped the Eurobond market again in the amount of $3.0 billion, and the IMF has approved the second review of the EFF program in December 2019.

The Banco Nacional de Angola (BNA) has maintained a restrictive monetary policy stance to anchor inflation and to offset the impact of the exchange rate devaluation. The BNA continued its efforts to reach a more flexible exchange rate by allowing the oil companies to sell foreign exchange directly to commercial banks, contributing to strengthening buffers against external shocks. Inflation remained high but continued to decline from 18.6% in 2018 to 16.9% in 2019, reflecting weak economic activity and muted exchange rate pass-through.

The authorities are actively addressing financial sector vulnerabilities. The BNA increased minimum capital requirements for banks. An Asset Quality Review (AQR) was conducted with the support of IMF and has indicated that the financial sector is sound.

Angola is expected to remain in recession in 2020 due to the recent plunge in oil prices and the global slowdown resulting from the impact of COVID-19. Oil sector growth will be highly affected due to the combined effect of supply and demand shocks. Non-oil sector growth is also projected to decline due to spillover effects from lower oil prices, reduced imported capital goods, tighter financing conditions, currency depreciation, and restrictions in the movements of goods and people

The COVID-19 pandemic and the global economic disruptions caused by it put at risk Angola's achievements of macro-economic stabilization and transition to a more sustainable and inclusive growth model.

Fiscal and Taxation Regime

The major recent tax changes were the following:

- Law nº 26/20 of 20 July, imposes an increase of the rate applicable for services acquired from non-resident entities, therefore, invoices issued by these entities for services that fall in the scope of this legislation, should be subject to corporate withholding tax, at the rate of 15%.
- Law nº 26/20 of 20 July, foreseen a decrease of the Corporate Income Tax general rate from 30% to 25%. That reduction will impact the income of the oil companies' Angolan resident service providers;
- Law nº 26/20 of 20 July, the rate applicable to Angolan Oil Companies that fall in the scope of Presidential Decree nº 3/12 of 16 March will benefit from a reduction of the Petroleum Income Tax rate from 50%/65.75% to 35%.
- Law nº 28/20 of 22 July, imposed significant changes to the current Employment Income Tax code (approved by Law nº 18/14 of 22 October), this was aimed to remove the burden imposed on lower incomes, maintain the tax burden imposed on average incomes, and progressively increase the tax burden imposed on high incomes.
- Law nº 20/20 of 9 July establishes the new Property Tax Code, in this code (I) owning of property (on the tax registered value), (ii) income from rental of property (on the amount of the rent) and (iii) free or onerous transfers of real estate (formerly, "SISA") becomes liable to Property Tax.
- Law nº 21/20 of 9 July imposes significant changes to the current General Tax Code. Among the several measures, it is foreseen the general anti-abuse rule that establishes the disregard for tax purposes of acts aiming at obtaining a tax advantage with abuse of legal forms; as well as

establishing taxation of acts or business under the applicable rules based on the respective substance and economic reality.

- Presidential Decree No. 161/20 of June 5 was published, creating the National Agency for Mineral Resources, abbreviated as ANRM, which is the national concessionary for steel and diamond.
- According to the Law no. 42/240, of 31 December 2020 which approved the General State Budget (GSB) for 2021, the following tax changes were made:

    - ❑ For Corporate Income Tax purposes, the withholding tax rate applicable to services provided by non-resident entities to oil operators resident or with a tax PE in Angola is set at 6.5%, applicable on services during 2021.
    - ❑ There were established the rates of inheritance and gifts tax applicable on transfers of goods and similar assets;
    - ❑ The statute of limitation for the 2015 fiscal year was exceptionally extended until 31 December 2021.

Regulatory Framework

The key regulators in the oil & gas industry include:

- Sonangol: was the State Petroleum Company holding all the oil concessions, managing and supervising the government’s interest in the industry. However, the Presidential Order no. 112/18 created the setting-up committee of the Angola National Agency for Oil, Gas and Biofuels (ANPG), which was responsible for the coordination of the transfer of the functions performed by Sonangol to the Angola National Agency for Oil, Gas and Biofuels (ANPG). The transfer of the functions was divided in three periods (preparation of the transition, transition and optimisation of the transition), being the conclusion of the transfer schedule for December of 2020. In this context, the setting up of the Angola National Agency for Oil, Gas and Biofuels (ANPG) is aimed at ensuring a more political coordination and elimination of conflicts of interest, as well as creating conditions for internal and external investment.
- Angola National Agency for Oil, Gas and Biofuels (ANPG): is currently the national concessionary, and the oil & gas regulator;.
- Ministry of Mineral Resources and Petroleum (MIREMPET): Regulates and supervises oil & gas operations carried out under the various licences and leases.
- Ministry of Finance (MINFIN): Administers the petroleum taxes and other taxation issues relating to the industry. In practice, the General Tax Administration (AGT) regulates the process with MINFIN.

Private Investment

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

- A minimum investment amount is no longer required for access to tax benefits and incentives;
- Tax benefits and incentives are granted automatically;
- Elimination of the local partnership requirement previously established for certain sectors of activity;
- New geographic areas were defined;
- The Law defines certain sectors as priority and determines that investments entailing certain activities in these sectors fall under the special regime, whereas investments in other non-priority sectors are covered by the prior declaration regime. The applicable regime, as well as the implementation geographic area have impacts on the tax benefits attributable to the investment business vehicle;
- The legislation allows the possibility of reinvestment for the purposes of obtaining new tax benefits and incentives upon the term of those provided in the initial investment. This possibility may however only be used once.

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

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

Forms of contracts

The most common forms of petroleum contracts in Angola include:

Concession/Joint Venture

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

Production Sharing Contract

ANPG is the holder of the concession and appoints a contractor to conduct petroleum operations in the area. The contractor provides the funds and bears the risks until commercial production is achieved. Production is allocated in barrels to costs, then taxes and finally, profit using a predetermined sharing formula.

Risk Service Contract

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

Unconventionals Oil & Gas

Decree-Law 10/07, of 3 October 2007, which has been altered by the Presidential Legislative-Decree nr. 4/12 of 10 May 2012, sets out the legal, tax, custom and foreign exchange regime applicable to the Liquefied Natural Gas (LNG) Project. This legislation refers to the tax regime for shareholders of the LNG Project and the executing companies. It also refers to some applicable tax exemptions.

In the terms of Presidential Legislative-Decree nr. 4/12 of 10 May 2012, the income arising from the activities of Angola LNG Limited and its associates are exempt from Corporate Income Tax (CIT) as well as Withholding Tax.

Presidential Legislative Decree nr. 7/18, of 18 May entered into force recently and foresees the legal and fiscal regime applicable to the activities of prospecting, research, evaluation, development, production and sale of natural gas in Angola. One of the goals of this decree is to encourage natural gas production and the associated industries.

The above-mentioned decree applies to oil companies that enter into an agreement with the national concessionaire and one of the advantages is the possibility of contracting longer periods than the ones contracted within the general regime for the following

- stages:
- Research;
- Production;
- Commercial discovery;
- Elaboration of the development and production general plan;
- Production starts after the commercial discovery.

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

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

ANGP's prior approval of the contracts

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

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

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

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

regime applies to contracts with maximum duration of 5 years. However, there is a duty to inform the National Concessionaire.

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

Local Content regulation in the country

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

- Presidential Decree nr. 271/20 of 20 October 2020 which establishes the Legal Regime of the Local Content of the Oil Sector, revoking the Ministerial Order 127/03, of 25 November 2003 ("Ministerial Order 127/03") on the legal regime for the contracting of goods and services by oil & gas companies, establishing a protection scheme for Angolan companies in respect of the provision of services and supply of goods to such entities;
- Law 10/04, of 12 November 2004 ("Petroleum Activities Law"), as amended by Law 5/19, of 18 April, which imposes on the Angolan Government the obligation to implement the appropriate measures to ensure, promote and encourage the engagement of companies held by Angolan citizens in petroleum-related activities;
- Decree-law 17/09, of 26 June 2009 ("Decree-law 17/09"), on the rules and procedures for the recruitment and training of personnel for the execution of petroleum operations, as regulated by Executive Decrees 45/10 and 46/10, of 10 May 2010, ("Executive Decree 45/10" and "Executive Decree 46/10"); and,
- Presidential Decree 86/18, of 2 April 2018 updated the rules and procedures of public tenders in the oil sector, revoking the previous Presidential Decree 48/06.

Special Contribution

The Presidential Decree 273/11, of 27 October 2011, amended by Presidential Decree 123/13, of 28 August 2013, which approves the transfers executed abroad, pursuant to technical assistance and management services agreements was revoked by Presidential Decree 98/20 of 9 April 2020.

The General State Budget for 2021, approved by Law no. 42/20, of December 31, 2020, does not provide for the continuation of the Special Contribution on payments for foreign technical assistance and management services. So, it is the general understanding that the contribution will not be required by the bank institutions during the fiscal year 2021. This law is effective from 1 January 2021.

Forms of contracts

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

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

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

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

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

Taxation regime

Direct taxes

Petroleum Income Tax (PIT)

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

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

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

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

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

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

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

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

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

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

The rate applicable to Angolan Oil Companies that fall in the scope of Presidential Decree nº 3/12 of 16 March will benefit from a reduction of the Petroleum Income Tax rate from 50%/65.75% to 35%.

Petroleum Production Tax

In addition to the PIT, oil companies operating as partners of Sonangol on concession agreements must pay a production tax on an annual basis.
The flat rate of 10% or 20% on the officially controlled crude oil output or sales per year. Reduced rate of 10% is only applicable with approval from the Government and for:

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

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

Petroleum Transaction Tax (TTP)

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

Deductible expenses

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

Non-deductible expense

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

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

Surface Charge

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

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

Training Contribution

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

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

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

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

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

Compliance requirements

Tax returns and payments

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

Estimated tax returns must be filed monthly.
Actual tax returns must be filed by the end of March of the following year and final tax paid at the same time. However, a substitution tax return can be submitted at the end of July of the same year, after the submission in March.

Penalty

- Late submission of returns: can go up to USD 500,000.
- Late payment of tax: reduction from 35% to 25% of the tax payable in the terms of Law nr. 21/20 of 9 July, plus 1% monthly interest

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

Oil exploration and production companies

Petroleum activities and secondary or associated activities carried out by oil companies are subject to taxation according to the Law 13/04 and, therefore, any other activities not considered as petroleum activities are taxed under the Companies' Corporate Income Tax normal regime.

Oil field service companies (OFS)

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

a. CIT is levied at 25% on the profits derived from business activities carried out in Angola by resident or non-resident entities. Tax resident entities are taxed on their worldwide profits. Permanent Establishments (PE) of non-resident entities are liable to tax on the profits attributable to the PE, sales of goods or merchandise of the same or similar kind to that sold by the PE and any other business activity which is of the same or similar kind to those conducted by the PE. The profits are adjusted in accordance with the provisions of the CIT Code.

b. There are two CIT regimes:
   - General: applies on taxpayers not included in the simplified regime and applies automatically to the public entities, financial institutions, companies subject to special regime of taxation, telecommunication operators, companies which are branches of foreigner entities.
   - Simplified: applies to taxpayers subject to the CIT who are covered by the VAT non-subjection regime.

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

c. Special tax regimes apply to the oil & gas industry and to the mining industry.

Withholding tax

Withholding tax is applicable on payments for services to resident and non-resident entities at a rate of 6,5% and 15% respectively. For Angolan taxpayers, this is regarded as an advance payment of the CIT due at the year-end; the deductibility of these withholding taxes against tax payable has been made unlimited in time from the previous limitation of 5 year, however approval from AGT would be required. For non-resident companies, this is a final tax in Angola.

In Law nr 42/20, December 31st, it is referred on its article 18.º that for the fiscal year 2021, the tax rate applicable to the global amount of accidental services provided by non-resident entities or entities with no tax PE in Angola to **oil operators** residents or with a tax PE in Angola would be 6.5%. Please note that this only applies to the payment made by **oil operators** to nonresident entities. Therefore, the payment made by services providers in Angola to nonresident entities would still be subject to WHT at a rate of 15%.

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

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

Investment Income Tax (IIT)

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

Section A

Section A includes:

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

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

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

Section B

Section B includes (amongst others):

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

Exemptions

The following income is exempt from IIT:

- Interest on deferred payments regarding commercial transactions;
- Payment of dividends to Angolan CIT payers that hold a participation higher than 25% for more than one year;
- Interest from financial products approved by the Ministry of Finance that intend to encourage savings, capped to capital invested of Kz 500,000 for each person;
- Interest from housing savings accounts intended to encourage savings for permanent dwelling.

Dividends

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

Prior to the transfer of dividends, investors should apply 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 IIT rate is 15%, except for the following income, for which the rate is 10% and 5%.

The tax rate is 10% for the following interest:

- Bond interest.
- Interest from shareholders' loans.

The tax rate is 5% for the following interest:

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

Royalties

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

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

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

Assessment and payment

On Section A investment income, the IIT is paid and assessed by the receiving entity. If the income is paid to a foreign entity, then the obligation shifts to the Angolan resident paying entity.

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

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

Entities should file their IIT tax return with the Tax Office by the end of January each year. The return should disclose the total amounts received, paid or made available to its owners in the preceding year.

Capital Gains Tax (CGT)

Capital gains arising from the sale of participation are subject to IIT at a 10% rate, except if these arise within the scope of a commercial activity subject to CIT or Employment Income Tax (EIT). Other capital gains obtained (other than the sale of participations) should be subject to CIT at a rate of 30% if obtained by Angolan residents or tax PEs in Angola taxable under the general regime.

Capital Gains realized by non-resident entities are only subject to tax in Angola if the capital gains are attributed to a PE in Angola or if the buyer is an Angolan investor. Capital gains on the sale of participations will trigger IIT at a rate of 10% - the

capital gain will be calculated based on the difference between the sale price and acquisition cost. Indirect sale does not trigger taxation in Angola.

Thin Capitaliaation and Transfer Pricing

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

According to the alterations introduced in the CIT code, by the Law no. 26/20, of 20 July the requirement to prepare and deliver a transfer pricing file has been extended to all entities subject to CIT (including OFS companies) whose sales and/or supply of services (turnover) during a fiscal year exceeds 7 billion Kwanzas (Previously, these requirements were applicable only to the entities considered as large taxpayers). Oil & Gas exploration and production companies are considered as large taxpayers and are subject to this requirement.

Indirect taxes

Value Added Tax (VAT)

Introduction

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

A transitional period applies until 31 December 2020, during which only companies registered in the tax office of large taxpayers will be subject to the general VAT system.

Companies with a turnover higher than 250,000 dollars will be under a simplified taxation regime; and the remaining companies will not be considered taxable persons for VAT purposes.

On December 31, 2020 was published Law no. 42/40 that approves the General State Budget for 2021 fiscal year (GSB 2021) brought significant changes to the VAT Code This law is effective from 1 January 2021.

The simplified VAT regime

The GBG 2021 introduced a simplified VAT regime, applicable to entities with a turnover or import operations of AOA 350.000.000 or lower, with reference to the past 12 months. These entities:

- Shall assess the tax due on a monthly basis by applying a 7% rate on the turnover effectively generated by non-exempt transactions;
- Shall self-assess VAT at the rate of 7% on the amount effectively paid, when acquiring services from non-resident entities;
- May deduct 7% of the total VAT incurred;
- May request a refund of the credit in their favor;
- When changing from the simplified to the standard VAT regime, the entity is allowed to deduct the VAT incurred goods aimed at being sold that have been acquired in the 12 months preceding the change and upon authorization from the Angola Tax Authority.

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

- Organised accounting according to Angolan PGC (Angolan GAAP).
- Absence of tax and customs debt.
- Registration duly updated in the system of the General Register of Taxpayers.
- Issuance of invoices/equivalent documents through certified billing software.

Not subject VAT Regime

The GBG 2021 introduced a not subject regime, applicable to the entities who's turnover or imports is equal or lower than AOA 10,000,000 are not subject to VAT.

Standard VAT Regime

Scope

Taxable persons

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

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

Taxable transactions

The following transactions are subject to VAT:

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

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

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

The captivation regime

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

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

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

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

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

VAT Rates, Exemptions and Zero-rate

VAT rate

The standard VAT rate of 14%. The GBG 2021 introduced a reduce rate of 5% applicable to:

- Imports and supplies of goods of “basic basket”, as listed in the Annex I table of the VAT Code;
- The reimportation of goods by those who exported them, in the same state in which they were exported, when they benefit from exemption from customs duties; and,
- Import of agricultural inputs as listed in Annex I of Law no. 42/40.

Cabinda VAT regime

Importation of goods and the supply of goods in Cabinda Province are subject to a VAT rate of 2%, except if the acquirer is an Oil Investing Company. Services are always subject to 14%.

Exempt supplies

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

- Medicines;
- Books;
- Educational services provided by entities duly recognized by the Ministry of Education;
- Medical services performed by hospitals, clinics and similar establishments;
- Transport of sick and injured in ambulances and other appropriate vehicles, by authorized institutions; and, supply of equipment to be for the purpose of medical services;
- Collective transport of passengers;
- Sale and lease of immovable property for house and commercial purposes;
- Financial intermediation operations, in certain conditions;
- Oil derivatives.

Zero-rated supplies

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

- Exports;

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

Taxpayers that carry out exclusively exempt operations are required to pay Stamp Duty on the receipt at a rate of 7%.

VAT Deduction

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

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

I. Expenses related to tourist vehicles, recreational crafts, helicopters, airplanes, motorcycles and mopeds;
II. Accommodation and meals expenses;
III. Tobacco expenses.

VAT on expenses (i) and (ii) may be deductible if the supply or exploitation of such goods is the company's activity.

VAT is deductible in the month in which the invoice was issued, or in the following month.

For the purpose of the VAT deduction, taxpayers must hold an invoice properly issued (or the customs note, in case of VAT paid on import of goods).

Taxpayers that perform supplies that grant the right to deduct and do not grant such right, must use the pro rata method to compute the amount of VAT deductible.

Pro rata is a ratio which results from a fraction that considers the following amounts:

- On the numerator, the annual amount, tax excluded, of the transactions (sales of goods and supplies of services) that grant the right to deduct VAT; and,
- On the denominator, the annual turnover.

VAT Compliance

VAT returns and payment

VAT returns must be submitted by the end of the month following the month the transaction occurred and payment must be made within the same deadline.

VAT Refund

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

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

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

Once confirmed, the reimbursement is granted:

- In cash or tax credit certificate to be issued by the Angolan Tax Authorities;
- When the taxable person has any tax debt a compensation is made.

Legal regime of invoices and equivalent documents

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

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

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

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

Deadline

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

Content

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

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

Procedure for issuing of invoices

Entities with a turnover higher than USD 250,000 or more are required to issue invoices through certified billing software (for entities under the simplified VAT regime these obligations started only in January 2020). The remaining entities must use invoices with the numbering pre-printed by an authorised printer.

The Circular no. 010/DSIVA/AGT/2021 published by General Tax Administration says that all taxpayers with a turnover greater than Kz 10,000,000.00 (ten million kwanzas), must issue invoices through computer programs certified under the terms of the applicable legislation.

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

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

Communication of invoices

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

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

Self-billing invoices

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

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

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

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

This regime has specific rules such as:

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

Penalties

- Non-submission of the VAT return: UCF 5 862;
- Non-payment or late payment of VAT: 10% to 30% of missing VAT;
- SAF-t: Kz 300.000.

Custom Duties

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

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

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

Excise Duties

From 1 October 2019 onwards, excise duty entered into force in Angola, which rates vary between 2% and 30% and apply to the following goods:

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

Other Taxes

Employment Income Tax (EIT)

With the entry into force of Law nr. 28/20 of 22 July, 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 (EIT) at rates progressing from 0% to 25%. The 25% marginal rate applies on the excess of Kwanzas 10 000 000 (approximately USD 15 300).

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 EIT.

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

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

- Insurances mandatory according to Law;
- Food allowance up to AKZ 30.000 of the monthly global amount;
- Transport allowance up to AKZ 30.000 of the monthly global amount;
- Employees' contributions paid to social security.

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

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

For self-employers, companies must withhold tax from any payments made to them at a rate of 6.5% depending on the services being rendered. The tax withheld is considered as a payment on account on the year final tax due by the self-employed individual. Self-employers must submit an annual return by the end of March regarding the employment income earned in the preceding year.

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

Non-resident self-employers are also subject to EIT withholding tax at 15% rate, which is considered a final tax.

Social Security Contributions (Segurança Social)

Registration

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

Contributions

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

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

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

Property taxes

Law nr. 20/20 of 9 July, revoked the previous Property Income tax (IPU) to establish the Property Tax (IP). This tax is levied on property Income from urban buildings, income from rustic buildings, from land for construction, free or onerous transfer of property.

Leased

According to the recent regulation, rents paid by Angolan entities (individuals or companies) that carry out commercial activity must be subject to IP at 15% rate.

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

The withheld IP must be paid over to the tax authorities by the end of the following month of that in which the rent is paid. When the tax is not withheld by the tenant, the landlord should assess the IP when filling the tax return in March of the following year. If requested, the payment could be made in six (6) installments.

Not Leased

IP is levied on the patrimonial value, as follows:

- PV ≤ Kz 5 000 000 - 0,1%
- PV From Kz 5 000 001,00 - 6 000 000,00 Fixed amount of kz 5 000,00;
- PV ≥ 6 000 000,00 - 0,5% of the excess of Kz 5 000 000,00

Owners of real estate assets not rented must pay the IP and deliver the Anual IP tax return at the last working day of March of the following year.

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

According to the IP Code, in general terms, property means the land itself or the land with all structures attached with capacity to produce income, except when connected with agriculture, forestry and cattle activities.

Property Transfer

A Property Transfer (PT) which used to be taxed under SISA is now foreseen in the Property Tax Code, levied at the rate of 2% for all acts that involve permanent or temporary transmission of real estate.

Land for construction

The new Property Tax code introduces a new provision, by taxing land for construction at the rate of 0.6%. Additionally, buildings left unoccupied for more than 1 year will be penalised with an additional payment equivalent to 50% of tax due.

Stamp Tax (ST)

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

ST applied on any receipts issued by companies, at a rate of 1%, which is payable by the end of the month following that in which the transaction occurs, with the exception that all receipts resulting from operations subject to VAT are exempt from ST for entities in the general and simplified regimes of VAT.

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

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

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

In addition to the operations referred to above, ST is also applicable to written agreements, financial and operating leasing in tangible assets (except if subject and not exempt from VAT), cheques, lending, civil deposits, gambling, licences, traders' books, deeds, report (except if subject and not exempt from VAT), credit bonds, and transfer of business, among other acts.

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

Private Investment Law (PIL)

In order to be able to repatriate dividends and other proceeds, as well as to gain from tax benefits, foreign investors must register a private investment project with the Agency for Private Investment and Promotion of Exports (AIPEX), under the Private Investment Law (PIL), approved by Law 10/18, of 26 June, and the Private Investment Law Regulation (PIL Regulation), approved by Presidential Decree 250/18, of 30 October. As referred above, this is not applicable to the Oil operators, but only to the companies providing services to the oil sector.

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

- Special Regime - applies to investments in certain activities in a priority sector (activities specifically listed in the PIL Regulation), being the incentives also dependant on the location of the project;
- Prior Declaration Regime - applies to all other cases, being the incentives the same regardless of the investment zone.

The PIL does not provide for a minimum investment amount in order to enable the foreign investor to repatriate dividends, profits or capital gains abroad.

The investment may be executed separately or cumulatively by one or more of the following forms:

- Transfer of funds from abroad;
- Application of national or foreign currency funds deposited in bank accounts domiciled in Angola and held by non-residents;
- Importation of machinery, equipment, accessories, and other tangible fixed assets;
- Importation of technology and know-how.

Tax Audits

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

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

After the Revision Commission, if the taxpayer considers that legal formalities have not been complied with, or errors in the interpretation of law have occurred in the process, the taxpayer may within 30 days, appeal to the court level. OFS companies are subject to audit rules enumerated in the General Tax Code.

Power and Utilities Sector

Brief overview of the Power and Utilities development in Angola

The Angolan power industry is subdivided in the following sub-sectors (I) electricity, (ii) oil production, (iii) oil trade (iv) gas production and (v) bioenergy. Although the upstream oil sub-sector is very critical to the Angolan economy, the other sub-sectors have been gaining importance and expression in the Angolan GDP.

The Angolan electricity capacity installed is currently 6,400 Megawatts (MW), which represents a 36% electrification rate, of which only 8% is allocated to rural areas, while 43% are allocated to urban areas.

The Government of Angola has made it a priority to increase the access of electric power in the country and has set targets of 9.9 gigawatts (GW) of installed generation capacity and a 60% electrification rate by 2025.

The generation of electricity projected by the Government to be accomplished, will be a mix of:

- Hydro - 58%
- Natural gas - 12%,
- Diesel powered generation - 30%

Other large-scale projects have been implemented including the Soyo combined cycle natural gas plant (750 MW), and the Laúca hydroelectric project (2.1 GW).

Legal Framework

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

- growth of the generation capacity;
- extension of the transportation and distribution network;
- strengthening of the interconnections with adjacent countries;
- increase of the access of electricity;
- improvement of the quality of the services; and
- loss reduction.

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

The main players of the electricity sector are:

- Ministry of Energy and Water (Ministério da Energia e Águas - MINEA) – responsible for the implementation of the electricity policy and for liaising with other ministerial departments and local government bodies.
- Electricity and Water Services Regulator Institute (Instituto Regulador dos Serviços de Electricidade e Águas - IRSEA) – responsible for regulating the activities of production, distribution, trading and use of electricity in the electric public sector.
- Angolan public entities:

  - ❑ National Network of Transportation of Electricity (Rede Nacional de Transporte de Electricidade - RNT) – responsible for managing the electric system, market operability and the transportation of electricity.
  - ❑ National Electricity Production Company (Empresa Nacional de Produção de Electricidade -PRODEL) – responsible for exploring power plants.
  - ❑ National Electricity Distribution Company (Empresa Nacional de Distribuição de Electricidade - ENDE) - responsible for trading and distributing electricity.

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

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

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

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

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

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

Regulatory Framework

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

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

Forms of Contracts

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

concession regime and under the free competition system, which enables private entities to become electricity producers.

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

Taxation regime and potential tax incentives

According to the Private Investment Law currently in force – Law nr. 10/2018 of 26 June -, the electricity sector is considered a priority, so investments in this sector may benefit from tax benefits and incentives which vary according to the project implementation area - provided that the specific activities to be performed are listed in the Regulation on the Private Investment Law. For these purposes, a minimum investment amount is no longer required for access to tax benefits and incentives.

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

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

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

- In the Property Tax, reduction of 50% of the tax rate applicable on the acquisition of properties for the office and establishment of the investment;
- In the Corporate Income Tax (CIT), Reduction of 20% of the rate of final CIT and of the provisional settlement for a period of 2 years;
- In the Investment Income Tax (IIT), reduction of 25% of the rate applicable on the distribution of profits and dividends for a period of 2 years;
- In Stamp Duty, 50% reduction in the fee for a period of 2 years.

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

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

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

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

Tax	Geographic zone	Tax Incentive
Real Estate Transfer Tax (RETT)	A	Acquisition of real estate for office purposes – Tax rate reduction by 50%
	B	Acquisition of real estate for office purposes – Tax rate reduction by 75%
	C	Acquisition of real estate for office purposes - Tax rate reduction by 85%
	D	The RETT rate corresponds to the half of the rate applicable to zone C
Property Tax (PT)	B	Ownership of real estate used for office purposes - Tax rate reduction by 50% for a period of 4 years
	C	Ownership of real estate used for office purposes - Tax rate reduction by 75% for a period of 8 years
	D	The property Tax rate corresponds to the half of the rate applicable to Zone C, for a period of 8 years

Corporate Income Tax (CIT)	A	Reduction of the final and provisory CIT by 20% for a period of 2 years
	B	Reduction of the final and provisory CIT by 60% for a period of 4 years
		Increase of the depreciation rates by 50% for a period of 4 years
	C	Reduction of the final and provisory CIT by 80% for a period of 4 years
		Increase of the depreciation rates by 50% for a period of 8 years
	D	The CIT corresponds to the half of the CIT rate applicable to Zone C for a period of 8 years
		Increase of the depreciation rates by 50% for a period of 8 years
Investment Income Tax (IIT)	A	Reduction of the rate applicable to profit and dividend payment by 25% for a period of 4 years
	B	Reduction of the rate applicable to profit and dividend payment by 60% for a period of 4 years
	C	Reduction of the rate applicable to profit and dividend payment by 80% for a period of 8 years

Cameroon

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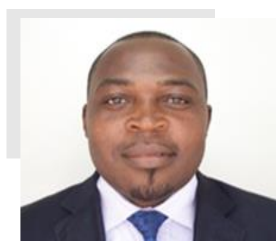

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Oil and Gas Sector

Brief history on Oil and Gas development in Cameroon

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

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

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

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

Cameroon's oil production in million barrels during the last five years is as follows: 21.9 in 2012, 24.2 in 2013, 29.9 in 2014, 34.9 in 2015, 33.6 in 2016 and 27.726 in 2017. Oil production at the end of the second quarter of 2018 was 12.427 million barrels.

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

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

In January 2018, the National Hydrocarbons Corporation (NHC) launched a Licensing Round for eight blocks in the hydrocarbons rich Rio del Rey Basin (RDR) and in the highly prospective Douala/Kribi-Campo (DKC) Basin which covers a total area of 19,000 km². International Oil & Gas Companies were invited to submit bid(s) for one or more blocks.

Reservoir estimates

The proven reserves of crude oil in Cameroon are estimated at 200 million barrels. According to the information made public by the National Hydrocarbons Corporation (NHC), as at 31st March 2019, the mining domain, which covers an area of 31 839.82 km2, comprises 04 exclusive research permits and/or authorizations, 21 exclusive mining concessions and/or authorizations, 02 blocs under negotiation, and 09 free blocs. The nine blocs on promotion are in the hydrocarbons rich Rio del Rey Basin (RDR) and in the highly prospective Douala/Kribi-Campo (DKC) Basin. Those blocks are Ndian River, Bolongo Exploration and Bakassi (in RDR), Etinde Exploration, Ntem, Elombo, Tilapia, Bomono and Kombe-N'sepe (in DKC).

Key figures as of April 30, 2019

- Oil production: 8.10 million barrels (-1.53%, compared with the same period of mainly due to the natural depletion of oil fields);
- Volume of crude oil marketed: 5.832 million barrels (+44.57%);
- Gas production:
  - Natural gas: 26 414.04 million cubic feet (747.96 million m3), +219.78%.
  - LPG: 8 058.61 tons (equivalent to 644 689 gas bottles of 12.5 kg); and
- Transfer to the State: CFAF 57.56 billion (+28.51%)

Political updates

Since September 2016, Cameroon, a country previously known for its stability, is facing violence. The country is carrying out military operations against secessionist insurgency in two Anglophone regions, attacks by the Islamic militant group, Boko Haram, in the Far North. President Paul Biya was declared winner of a seventh seven-year term on 7th October 2018. That election was followed by the contestation from the main leader of the opposition which is imposing on the Country a serious political crisis.

Economic updates

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

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

According to IMF, in 2019, Cameroon's growth fell to 4% from 4.1% a year earlier. This was mainly due to lower than anticipated performance in the non-oil sector. This decline was partially offset by the rebound in the oil and gas sector.

Although Cameroon’s diverse economy remains the most resilient in Central Africa, the weakness of its growth base and its great exposure to fluctuations in global commodity prices are a source of vulnerability. As oil revenues dropped and public finances deteriorated, the priority of the government remained the budgetary consolidation.

The country recorded an increase of its inflation, from 1.1% in 2018 to 2.1% in 2019. Public deficit was 2.3% of the GDP. The IMF forecast a gradual rise of the non-oil growth buoyed by the completion of investments in infrastructure and energy projects and a gradual resolution of the security crisis.

According to the updated IMF forecast of April 14, 2020, due to the outbreak of COVID-19, the expected GDP growth was to drop to -1.2% in 2020 and recover to 4.1% in 2021, subject to the post-pandemic global economic recovery. As of to date the report on the economic change is yet to be published.

Fiscal regime

Institutional overview and regulatory framework

1. The National Hydrocarbons Corporation of Cameroon (SNH). SNH is a public company with financial autonomy. It was created on 12th March 1980 and has its head office in Yaoundé. SNH has the mission to manage State interests in the oil and gas sector. As such:
   - SNH promotes, develops and monitors oil and gas activities throughout the national territory. Within this framework, the company works in association with international oil companies, ensuring notably compliance with all regulatory texts as well as control of production costs. In addition, SNH is a full oil operator, after putting on production of the Mvia field, which the company has been operating since 2009.

- SNH sells the share of national crude oil production accruing to the State on the international market, through contracts, as well as its own share as an investor. It also carries out trading activities on behalf of SNH partners, at their request. The selling prices of Cameroonian crude oil grades are set in relation to Dated Brent, which is the reference crude oil of the London market. Depending on market conditions, the prices feature discounts or premiums, which reflect the difference in quality compared to Brent, the cost of transport to target markets, the cyclical demand for this type of crude oil, etc.

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

2. Hydrocarbon Price Stabilization Fund (CSPH)

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

3. Ministry of Water Resources and Energy

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

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

Regulatory Framework

Industry sectors – Upstream and Downstream

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

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

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

Business License

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

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

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

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

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

Capital investment regulations

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

Forms of contracts

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

Conventions of Establishment and Contracts of Association

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

Concession Contracts

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

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

Production Sharing Contracts

The Production Sharing Contract is a petroleum contract via which the holder receives compensation in kind consisting of a share of hydrocarbons production according to the provisions of the Petroleum Code and the Contract. The holder shall be responsible for financing the petroleum operations.
Under this contract, the hydrocarbons produced shall be shared between the state and the holder in accordance with the terms of the Contract. The holder receives a share of production as reimbursement of its costs (cost oil) and compensation in kind on the remainder of the total hydrocarbons production (profit oil) according to the provisions of the Contract.
The Production Sharing Contract may also provide for a compensation in cash rather than compensation in the form of a share of hydrocarbons. In such case, the contract shall be deemed to be a Risk Services Contract.

Risk service contract

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

Local content in the oil and gas industry

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

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

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

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

Taxation regime and potential tax incentives

A new Petroleum Code was published 25th April 2019. That New Code shall apply to the Petroleum contracts concluded from the date of its promulgation (i.e. 24th April 2019).

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

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

Direct taxes

Petroleum/Oil taxation

There are two main regimes of petroleum taxation in Cameroon:

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

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

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

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

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

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

The main differences between the two types of contracts are:

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

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

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

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

- Each Operator / Holder of the oil contract is responsible for its own CIT;
- Exploration and development costs shall be amortised according to modalities set out by the oil contract;
- Equipment shall be amortised from the commencement of their utilisation;
- Exploitation cost shall be booked in expense accounts;
- Losses can be carried forward for the maximum number of years provided for by the oil contract (at least 4 years). There is no carry-back mechanism;

- Head Office expenses are deductible within the limit provided by the oil contract; except where full deductibility is granted;
- Fiscal year means a period of twelve (12) consecutive months computed as provided by the oil contract.

Royalties

Proportional mining royalty applicable to conventions of establishment

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

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

Proportional royalty applicable to concession contracts

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

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

Additional Petroleum Duty

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

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

Signature and Production bonuses

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

Flat fees

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

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

For Exploitation Authorisation, the flat fee is as follows:

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

Annual Surface Rental fee

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

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

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

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

Gas taxation

There is no specific regime for gas taxation in Cameroon.

Liquefied natural gas (LNG) regime

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

Withholding taxes

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

- For remunerations of services on research and development operations, application of the reduced rate of Special Income Tax (SIT) at 5% regardless of the invoicing conditions, or the existence of any affiliation between the parties if the supplier does not have a PE in Cameroon. Oil companies that do not opt for the reduced rate of 5% above and invoke their establishment agreements shall be exempt from payment of the SIT and remain liable to the SIT at the rate of 15% where the services rendered have not been invoiced at cost price by affiliated companies; Local PEs that have opted for the WHT regime shall suffer WHT at 15% applicable on the gross revenue.
- For remunerations of services on exploitation operations, application of the SIT at the normal rate of 15%;
- 16.5% applicable to interest on loans other than those granted by non-resident lenders for fund pertaining to development investments;
- 5.5% applicable to services provided by local vendors who are listed as members of a liberal profession except where exempt;
- 2.2% or 5.5% applicable to goods and materials supplied by local vendors depending on their tax regime if the customer is authorized to deduct income tax and VAT at source;
- 15% applicable to rents paid for the leasing of premises to entities not attached to a specialized tax centre.

Capital gain tax (CGT)

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

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

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

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

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

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

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

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

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

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

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

Property Tax

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

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

Double Tax Treaties

Cameroon has concluded Double Tax Treaties with the following:

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

Profit repatriation issues

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

Transfer Pricing and Thin Capitalisation regulations

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

This obligation shall apply where:

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

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

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

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

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

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

Indirect taxes

Value-added tax (VAT)

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

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

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

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

Consumption tax

There is no such tax in Cameroon.

Registration Duty

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

The formation of a company and subsequent capital increases in Cameroon are not subject to registration duty. Public contracts or orders paid from the budget of the state, regional, and local authorities; public institutions, public corporations, and semi-public companies; or through external financing shall be subject to registration duty at the rate of 2% for amounts below XAF 5 million and 5% for amounts at or above XAF 5 million.

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

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

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

Custom duties

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

At the Exploration/Research phase

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

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

At the Exploitation phase

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

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

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

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

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

The above customs benefits apply to the contractor and their sub-contractors. The Ministry in charge of finance provides a list of products and materials for which this benefit applies. However, the list although in existence, is unsigned, therefore the concern is that

it does not have the force of law. Customs generally adhere to the list. Practically, companies will apply for a certificate of exemption for each category of operation. This process can take 1 to 2 months and therefore timing must be carefully planned. Moreover, the certificate of exemption applies to the PSC contractor and to immediate tier 1 subcontractors.

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

Other custom duties

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

OHADA Levy

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

Data processing fee

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

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

SGS Inspection fees

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

Registration duties

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

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

Stamp duty

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

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

The social contribution is divided into three parts:

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

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

Other taxes

Personal Income Tax (PIT)

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

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

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

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

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

Deductible Charges:

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

- Family Expenses: 500,000 FCFA per year.

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

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

National Social Insurance Fund (NSIF)

Employer and employee must contribute on a monthly basis to Cameroon's National Social Insurance Fund at 11.2% and 4.2%, respectively. The basis of contribution is capped at XAF 750,000 per month (i.e. XAF 9,000,000 per year). Employers in Cameroon must also contribute 1.75%, 2.5%, or 5% of total salaries to the National Social Insurance Fund for Industrial Accidents when they are respectively classified in groups A, B or C according to the classification per type of activity. The calculation basis in this category is the gross salary, including the benefits in kind assessed for their actual amount.
In addition to the Personal Income Tax and social insurance contributions made to NSIF, there are other taxes and contributions imposed on the salaries of employees working in Cameroon. These are divided into taxes to be borne by the employer and taxes to be borne by the employee, as summarised in the table below.

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

Other statutory contribution

No other statutory contributions are applicable in Cameroon.

Taxation of Oil Field Services (OFS)

Services from OFS based abroad shall be taxed as follows:

- For remunerations of services on research and development operations: application of the reduced rate of Special Income Tax (SIT) at 5% regardless of the invoicing conditions, or the existence of any affiliation between the parties if the supplier does not have a PE in Cameroon. Oil companies that do not opt for the reduced rate of 5% above and invoke their establishment agreements shall be exempt from payment of the SIT and remain liable to the SIT at the rate of 15% where the services rendered have not been invoiced at cost price by affiliated companies;
- For remunerations of services on exploitation operations: application of the SIT at the normal rate of 15%.

Local Permanent establishments of OFS have the choice between the tax regime of common application (i.e. corporate income tax of 33% (for entities with an annual turnover above XAF 3 billion) or 30.8% (for entities with an annual turnover equal to or less than XAF 3 billion) on the net taxable income, or a withholding tax regime of 15% on gross revenue). OFS incorporated locally are subject to the tax regime of general application.

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

Incentives in the oil and gas industry

Capital allowances

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

Investment tax credits

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

Tax exemption

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

Exemption from customs duties:

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

Export processing zone

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

Group relief

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

Compliance Requirements

Annual declarations

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

Subject to specific stipulation in the oil contract, CIT returns of a given fiscal year should be submitted on the 15th March of the following year (i.e. the CIT return of FY 2020 should be submitted on March 15th, 2021 at the latest). The 2018 Finance Law states that the annual tax return shall be accompanied by Transfer Pricing documentation, for entities falling under the jurisdiction of the Large Taxpayers' Unit (LTU).

Quarterly returns

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

Payment of income tax

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

Payment of withholding tax

Taxes withheld at source shall be declared and paid on a monthly basis. The taxes withheld at source for a given month shall be paid no later than the 15th of the following month. This concerns payroll, payments of

invoices received from local vendors and remunerations of services provided by entities located overseas.

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

Penalty

Late submission of returns

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

Interest on late payment

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

Fines

- The filing after an official notice, of a return showing nil tax or a credit shall give rise to a fixed fine of CFA francs 1 million;
- Failure, after an official warning, to file within the legal deadline, the statement of shareholdings in other companies where they exceed 25 % of their share capital (for companies under the Jurisdiction of the Large Taxpayer's Unit only), declarations of remunerations paid to third parties vendors in excess of XAF 250 000: fine of F.CFA 1 million per month.
- Failure to file or forward the statistical and tax return (i.e. the annual tax return) within the deadlines shall give rise to a non-discountable fixed fine described in detail below:
- Companies falling under the Large Tax Unit: F.CFA 5 five million;
- Companies falling under Medium-sized Enterprise Taxation Centres and Specialized Taxation Centres: CFAF 1 million;
- Companies falling under the Divisional Taxation Centres: CFAF 250 000 (two hundred and fifty thousand).

Tax audit

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

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

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

Audit and other reporting requirement Audit Audit and other reporting requirement Audit

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

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

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

“Excess profit tax” is determined as follows:

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

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

Fiscal and taxation structure as per the New Petroleum Code

Almost all the taxes and exemptions provided by the old Petroleum Code have been maintained in the New Petroleum Code. The main tax modifications brought by the new Petroleum Code are as follows:
The rate of Corporate Income tax applicable to revenue derived from exploration and exploitation operations shall be 35%.

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

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

The measures mentioned above shall consist notably in readjusting the fiscal or economic terms of the contracts concluded between the State and the petroleum companies to speed up the recovery of the investments and improve their profitability. The aforementioned special circumstances shall be examined by the State prior to granting the incentives.

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

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

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

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

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

Power and Utilities Sector

Brief overview of Power and Utilities development in Cameroon

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

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

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

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

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

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

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

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

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

Legal Framework

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

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

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

The following activities shall fall under the authorization regime:

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

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

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

Regulatory Framework

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

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

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

The main operators are ENEO, KPDC and DPDC.

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

- Law No. 2011/022 of 14 December 2011 governing the electricity sector in Cameroon;
- Decree No. 2012/2806 / PM of 24 September 2012 relating to the implementation of Law No. 2011/022 of 14 December 2011 governing the electricity sector in Cameroon;
- Decree No 2001/021/PM of 29 January 2001

setting the rates, modalities of calculation, of recovery and allocation of the royalty on the activities of the electricity sector;

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

Taxation regime and potential tax incentives

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

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

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

Tax and customs incentives of general application

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

  Internal taxation (incentives on transactions realized in Cameroon);

  - 75% reduction of CIT or tax on industrial and commercial profits for a period of five (5) years;
  - 50% reduction of CIT or tax on industrial and commercial profits from the sixth to the tenth year;
  - Exemption from registration duties relating to loans, advances in current accounts and cautions for a period of ten (10) years;
  - Free registration without payment of graduated stamp duties on deeds relating to increase, reduction, reimbursement and liquidation of share capital for a period of ten (10) years;
  - 50% reduction of registration duties on deeds of transfer of rights on ownership or possession of real estate and leases for a period of five (5) years;.

- 25% reduction of tax on income from stocks and shares (TISS or distribution tax) on the distribution of revenue from the sixth to the tenth year;
- Carry forward of losses up to the fifth fiscal year following their occurrence for a period of ten (10) years.

Customs duties (goods entering in Cameroon)

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

Specific tax and customs incentives

- **Specific incentives related to the realization of certain activities**

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

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

- **Specific incentives related to the achievement of certain specific objectives**

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

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

  - Exemption from VAT on interests on local or external loans relating to the investment program;
  - Exemption from property tax (real estate tax) on estates built or not, which are part of the site dedicated to the transformation unit and of any real estate extension by destination;
  - Direct removal at the request of the investor, of equipment and materials destined to the realization of the investment program;
  - Special temporary admission of industrial equipment and materials likely to be re-exported and specific to priority objective.

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

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

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

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

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

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

Chad

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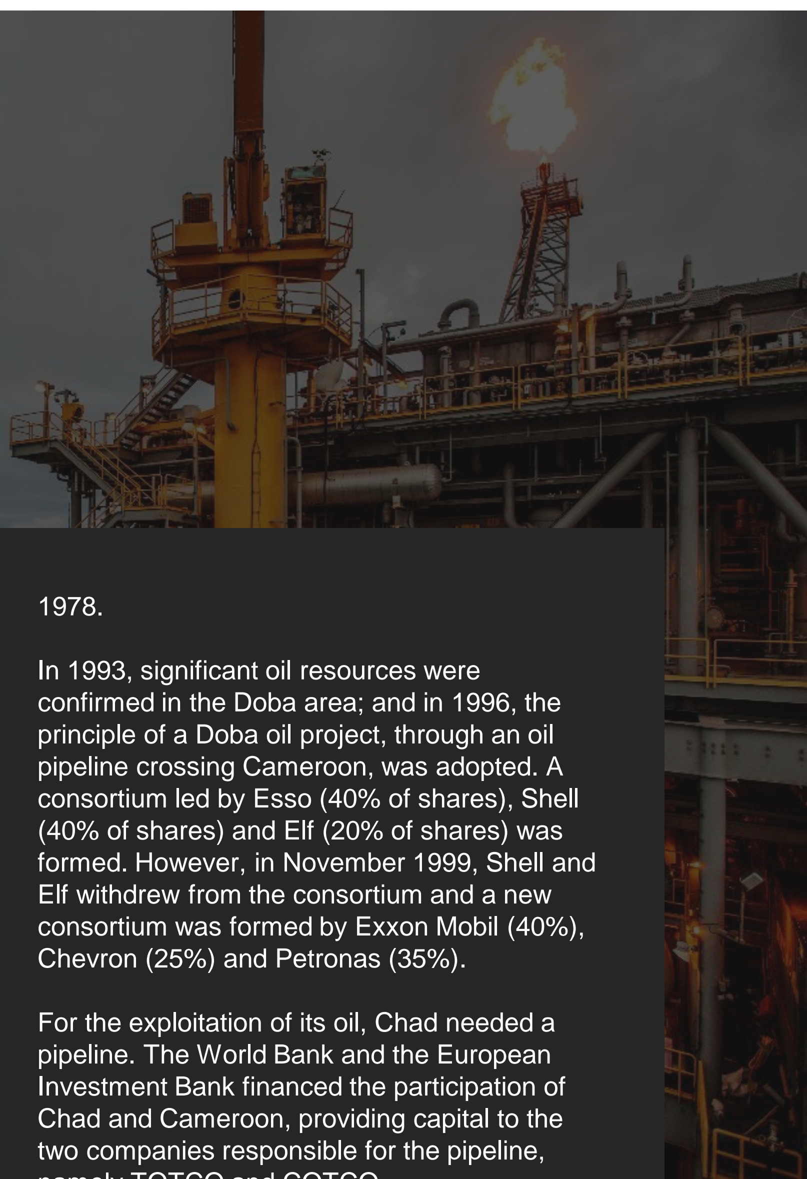
Oil and Gas Sector



Brief overview of the Oil & Gas development in Chad

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

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

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

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

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

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

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

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

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

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

According to the 2012 BP Statistical Energy Survey, Chad's commercial oil reserves were estimated at 1.5 billion barrels at the end of the 2011. Despite the financial crises, Chad's upstream oil sector continues to attract many oil companies.

The consortiums currently exploiting oil in Chad are; Exxon, Griffiths, CNPC and OPIC Africa.

The key institutions involved in the upstream oil sector are the Ministry of Energy and Petroleum, the National Assembly and the National Hydrocarbons Company (named SHT). The current applicable petroleum contracts are the concession contract and production sharing contract.

The law relating to the approval of the production sharing contract between the Republic of Chad and Ewaah Investors Limited was adopted by the national assembly on 27 November 2019 and
Republic of Chad expects to exploit the oil refining and gas processing plant being constructed at Sedigui in the current year 2020.

Political Updates

The Government of the Republic of Chad officially declared the first case of the COVID-19 pandemic on March 19, 2020. Since this date, the Government has decreed a State of Health Emergency and has taken drastic measures to prevent the spread of the pandemic, including the closure of the country's airspace, terrestrial frontiers, schools, churches, mosques, bars, restaurants, casinos and markets.

There are insecurities caused by the sect Boko haram in certain regions of the country.

On August 11, 2020, President Idriss Déby Itno was elevated as Marshal of Chad.

A new Chadian Constitution was adopted by the National Assembly and promulgated on December 14, 2020, by President Idriss Deby Itno.

Presidential elections will be held in April 2021.

Economic Updates

The international environment is characterized by an increase of the Brent price and an appreciation of the USD/ XAF exchange rate:

- The price of Brent averaged 42.93 dollars (USD) in the 3rd quarter 2020 compared with 29.34 dollars (USD) in the 2nd quarter 2020, i.e. an increase of 46.3%;
- The USD/XAF exchange rate averaged 561.75 XAF in the 3rd quarter of 2020 compared with 595,64 in the 2nd quarter 2020, i;e. a crease of 5.7% of the XAF compared to the USD.

In the 3rd quarter of 2020, the oil revenue recovery rate is 62.5% compared to the same quarter of last year, despite the decrease of crude oil export volume and the increase of the USD/XAF exchange rate.

These revenues increased from XAF 221.8 billion in the 3rd quarter of 2019 to XAF 360.4 billion in the 3rd quarter of 2020.

This improvement of oil revenues results from the recovery of Corporate Income Tax (CIT) for the last fiscal year and the increase of the Brent price.

Fiscal regime and Tax Regime

- State General Inspection;
- General Inspection of Finance;
- General Directorate of Tax Service;
- General Directorate of Customs Services and Indirect Taxes
- General Directorate of Stamps and Registration.

General Tax regime

Rates of WHT on rents paid to individuals:

Previously, land revenues were subject to the rate of 15% for residents and 20% for non-residents. Since January 1, 2019, rents paid to individuals are subject to proportional rates of 20% both for residents and non-residents beneficiaries (new section 119 of the CGI).

Oil & gas tax regime

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

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

Tax levies and exemptions applicable to PSC

Under PSC, Oil operations are subject to certain taxes, fees and charges. However, some exemptions are also applicable to PSCs.

Applicable taxes

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

- Corporate income tax on net profits earned from all within the Chadian territory at a rate between 35% and 75%;
- Signing bonus;
- Exclusive attribution bonus for the authorisation of exploitation;
- Production royalty (imposed at a rate of 14.25% to 16.5% on the total production of crude oil and from 5% to 10% on the total production of natural gas).
- Superficiary royalty;
- Exceptional tax on the capital gain from sale of assets;
- Stamp fees;
- Registration fees;

Regulatory Framework

The key institutions involved in the upstream petroleum sector include:

- the government (through the Minister of Energy and Petroleum);
- the National Assembly;
- the national hydrocarbons company named “Société des Hydrocarbures du Tchad” (SHT);
- the Extractive Industries Transparency Initiative Committee.

In the downstream petroleum sector, the regulation agency is named “Autorité de Régulation du Secteur Pétrolier Aval du Tchad” (ARSAT).

Types of contracts

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

Local Content Regulation

- Law No.006/PR/2007 dated 20 April 2007 on hydrocarbons, as amended and supplemented by ordinance No. 001/PR/2010 dated 30 September 2010 approving a template of production sharing contract regulating the activities of exploration and production of liquid or gaseous hydrocarbons in the Republic of Chad;
- Decree No.796/PR/PM/MPE/2010 dated 30 September 2010 implementing the Petroleum Law (together with the Petroleum law, the Petroleum Legislation);
- Decree No. 307/PR/2017 of 11 April 2017 relating to the statutes of the Chadian Hydrocarbons Company.
- Ordinance No. 001/PR/2017 of 11 April 2017 amending Law No. 27/PR/2006 of 23 August 2006 establishing the Chadian Hydrocarbons Company.

It is worth noting that a draft of law amending the petroleum code is in process and shall be presented to the National Assembly for adoption.

Incentives available within the petroleum industry

Under PSC and concession agreement, Oil operations are exempted from the following taxes:

- minimum tax;
- apprenticeship tax;
- business license;
- corporate income tax;
- tax on profit distributed;
- taxes of any kind on interest and other interests of sums borrowed by the Contractor for the purposes of the oil operations;
- registration fees resulting from the setting-up of the companies and the capital increases;
- property tax on the property of companies and all other property taxes except those payable on residential buildings;

- all export taxes and duties in respect of its petroleum activities; and
- taxes on sales, value added tax and any assimilated tax on supplies of goods and services.

Taxation regime

Direct Taxation

Corporation Income Tax ("CIT")

- Before 2015 fiscal year:

  The rate of CIT varies from 40% to 75%, depending on the conditions to be defined in the oil contract (article 74.2 of Law N°006/PR/2007 relating to hydrocarbons).
- Since 2015 fiscal year:

  The rate of CIT according to common law was reduced from 40% to 35%.

Thus, it is obvious that the rate of CIT to be applied to oil companies shall be imposed at the rate of 35% to 75%, depending on the conditions defined in the oil contracts.

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

Capital Gains Tax (CGT)

Capital gains realised by resident companies are not subject to any tax.

Capital gains realised by non-resident companies are subject to Withholding Tax (WHT) at a rate of 25% if these companies do not have their tax residence in the CEMAC area. This WHT shall be filed and paid not later than the 15th of the month which follows the month of the payment of these gains to these companies.

Previously, capital gains realized by oil companies are not subject to WHT. This is usually stated in the contract. However, since 1 January 2019 capital gains realized by oil companies are subject to WHT.

Withholding tax (WHT)

Since January 1, 2018, all payments made to non-residents are subject to the WHT at the common rate of 25% including payments made by oil companies.

From January 1, 2020, all payments made to CEMAC-residents are subject to the WHT at 7.5% including the payments made by oil companies.

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

Thin capitalisation and Transfer Pricing

The 2018 Finance Act introduced the transfer pricing documentary obligation. The section 1000 of the General Tax Code, as amended by the 2018 Financial Act, specified the documents to be provided to the tax authorities by companies that are dependents, related or that have control of companies located outside/inside Chad and that perform intragroup financial transactions.

The documents to be provided include general information on the group of associated companies and specific information on the company located in Chad.

General information about the associated group of companies to be provided are, among others:

- the general description of the legal and operational structures of the group of associated companies;
- the identification and geographic location of associated companies engaged in intragroup transactions during a fiscal year.

Specific information concerning the company established in Chad are:

- a description of transactions with other associates' companies during that fiscal year, including the nature of the transactions and their amounts;
- the identification and geographical location of the group companies involved in the transactions;
- the presentation of the main competitive pricing method used, and any change happened during this year.

The 2019 financial law increased the penalties applicable for non-compliance with the transfer pricing documentary requirement.

Since 1 January 2019, a penalty of 5% on the amount of intragroup transactions with a minimum of XAF 50 million is applicable in case of non-compliance with the transfer pricing documentary requirement.

Double Tax Treaties (DTT)

The double tax treaties signed by Chad and applicable to the oil & gas sector are:

- the CEMAC treaty, the economic and monetary community of the states of central Africa treaty. The Central African Economic and Monetary Community (CEMAC) is made up of six States: Gabon, Cameroon, the Central African Republic, Chad, the Republic of the Congo and Equatorial Guinea.
- the treaty signed with the Republic of Algeria.
- the treaty signed with Turkey.
- the treaty signed with Libya.
- the treaty signed with Emirats Arabes Unis (not yet enforceable).

Indirect Taxes

Value Added Tax (VAT)

The VAT rates are:

- 18% applicable to all taxable transactions;
- 9% applicable to the local products: sugar, oil, soap, products and products by food and beverage local industries, except alcohol; and
- 0% applicable to exports and related international transportation.

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

From 1 January 2019, VAT exemption certificates will no longer be automatically renewable. The application shall be filed near the Technical Committee in charge of examination of tax and customs exemptions. The Minister in charge of Finances and Budget will appoint the members of the committee.

Furthermore, since 1 January 2019, the invoices issued and received from providers of services or vendors shall clearly contain the following mentions:

- Tax number identification of both client and vendor;
- Quantity of goods sold, or services provided (unity, volume, hourly rate etc.);
- Description of services or goods (nature and characteristics);
- Unit price;
- Date of issuance or date of issuance of invoice;
- Number of invoices;
- Rate and Amount of VAT;
- Total of amount excluding taxes;
- Total of amount including taxes.

In the absence of the one of the above, VAT in relation to the invoice shall not be deductible. VAT shall be filed and paid no later than the 15th of the month which follows the month of the realizations of taxable transactions.
From January 2020, input VAT supported by taxpayers who are not mentioned on the list of active taxpayers provided by the General Directorate of Tax Services is not deductible.

Withholding tax on VAT

Introduced by the 2017 Finance Law and modified by the 2017 Amending Finance Law, the withholding VAT was effective since September 1st, (decree N°114/PR/MFB/DGM/DGSI/2019).

The 2020 Finance Law definitively fixed the regime of withholding VAT.

Public companies, public and para-public establishments and private companies shall withhold VAT when paying suppliers of goods and services which are not listed in the list provided by the Tax Administration. The withheld VAT shall be declared and paid to the Public Treasury no later than the 15th of the month following that of payment; the Public Treasury shall issue a receipt to testify the payment. The taxable event and the due date for withholding tax on supplies of goods is the invoice.
For supplies of services, a taxable event is the execution of services and the due date is payment of the invoice.

Taxpayers entitled to withhold VAT shall attach to their VAT tax return the list of companies subject to withholding VAT, their tax identification member (TIN) and the withheld amounts.

Public and private companies and public and Para public establishments that are authorized to withhold VAT are exempted from the said withholding tax on invoices for services rendered among themselves.

Any compensation between the amounts VAT withhold and tax due by the collector is not allowed.

The list may be reviewed.

To this day, only 84 Public and private companies and public and Para public establishments are entitled to withhold VAT.

Sales Tax

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

Customs and Excise Duties

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

Oil companies are often exempted from custom duties. This is generally defined in the contract.
However, since 1 January 2020, taxpayers which benefit from customs and excise duties exemptions provided by the General Tax Code and Custom Code are required to apply for the renewal of their customs and excise duties exemptions.

The application shall be filed near the Technical Committee in charge of the review of the tax and customs exemptions.

Oil & gas agreements containing tax exemptions which are not compliant with the new tax legislation shall be compliant latest by December 2019.

Other Taxes

Social Security contributions

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

Employment tax

Taxes payable by the employee but withheld by the employer.

From 1 January 2018, the calculation of the personal income tax (PIT) is made by applying the progressive scale below to the taxable income, after the integration of the benefits in kind, taxable allowances and premiums allocated to the employee.

Annual Salary (XAF)	Rate
From 0 to 800,000	0%
800,001 to 2,500,000	10%
2,500,001 to 7,500,000	20%
Above 7,500,000	30%
Annual Salary (XAF)	Rate

For the calculation of the monthly PIT, the amount of the annual tax obtained will be divided by twelve (12).

From 1 January 2019, the following charges will not be deductible from the taxable income:

- Free arrears of XAF 600 000 per year reputed paid to ascendants, descendants and collaterals;
- Alimony paid by virtue of the decision of the court.

Furthermore, from 1 January 2019, transportation allowance will be exempted from Personal income tax if the following criteria are met:

- Transportation allowance shall benefit to all employees;
- Transportation allowance shall not exceed 30% of the base salary.

The rates of capping of benefits in kind have also been changed as follows:

- Housing: 20% (former rate 15%);
- Vehicle: 10% (former rate 8%);
- Water: 4% (former rate 2%);
- Gas: 2% (former rate 1%);
- Food: 15%with a maximum of XAF 75 000 per month (former rate 25% with a maximum of 50 000 for teenager with less than 15 years).

Other taxes paid by the employee:

- Social security (named Caisse Nationale de Prévoyance Sociale (CNPS) in French) at a rate of 3.5%, paid by the employee;

- Rural Funds (Fonds d'Intervention Rural (FIR) in French) at a fixed rate of XAF 40 paid by the employee.

Taxes paid by employer:

- Fixed Tax at the rate of 7.5% of the gross salary of each employee;
- Apprenticeship Tax at the rate of 1.20% of gross salary of each employee;
- Social security contributions at the rate of 16.5% of gross salary up to XAF 500 000.

However, depending on their oil contracts, oil & gas companies and their subcontracting companies are generally exempted from Fixed and Apprenticeship taxes. The exemption from fixed and apprenticeship taxes shall be renewed from 1 January 2019 at the termination of the oil & gas agreement which granted these exemptions.

Oil & gas companies shall apply for the renewal of fixed and apprenticeship taxes. Oil & gas agreements containing tax exemptions which are not compliant with the new tax legislation must be compliant latest December 2019.

Taxation of Oil Field Services (OFS) companies

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

Property Tax

There are taxes on built properties and taxes on unbuilt properties. The properties are buildings or outbuildings, facilities, installations, cultivated or uncultivated lands, etc.

There are no differential regimes applicable to property rich companies.

Deemed Profit Taxation

There is a profit tax at the rate of 20% on the profit realised by the branches of foreign oil companies.

Compliance requirements

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

Until 2017, taxpayers could subscribe to revised tax returns without a time limit.

From 1 January 2018, any taxpayer who has made errors or omissions in its spontaneous declarations (monthly declarations, DSF, DADS) can subscribe to a corrigendum within 2 months from the date of filing of the initial declaration.

Tax audits

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

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

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

Since 1 January 2019, taxpayers may apply to the tax administration to perform a tax audit if they notice that there are some errors, inadequacies or insufficiencies in their accounting. The form of the tax audit shall be defined by the tax administration.

Also, Since 1 January 2019, the tax administration may issue a partial notice assessment in case it performs a tax audit on more than one fiscal year

Power and Utilities Sector

Brief overview of Power and Utilities development in Chad

The energy sector is not fully exploited. Consumption of conventional energy (electricity and petroleum products) accounts for only 10% of national consumption. The exorbitant cost and scarcity of electricity is one of the major obstacles to Chad's economic development. Over 80% of the production and consumption of electricity occurs in the capital, N'Djamena.

Chad's ability to achieve increased energy access and poverty reduction is constrained by significant challenges in the power sector. It currently has about 125 MW of installed generation capacity to serve a population of 14.5 million people. As a result, Chad's government is working to expand its electricity supply and encourage investment in the energy sector to stimulate the economy.

Due to the deficit in the supply of electricity, but also a low rate of electrification and especially the high cost of the kilowatt-hour due to the high dependence on fossil fuels, the lack of interconnection with neighboring countries and weak integration of renewable energy in electricity generation, the Chadian government decided to adopt an energy policy letter for the period 2018-2030. Within the framework of the implementation of the energy policy for 2018-2030, several drafts of laws and regulations have been proposed for adoption during a recent conference held 17, 18 and 19, August 2018.

Chad is endowed with the tenth-largest oil reserves in Africa, as well as wind and solar resource potential. Most of its existing capacity comes from diesel and HFO (heavy fuel oil) generators. Chad has one distribution and retail utility company: Société National d'Electricité (SNE).

There are two major projects of construction of solar power plant, which started in 2020: Gaoui solar power and Djermaya solar power.

Legal framework

- Law No. 014/PR/1999 of June 15, 1999 on the production, transport and distribution of electric power;
- Law No. 036/PR/2019 of August 26, 2019 on the electric power sector in Chad (which amend the previsions one);
- Decree N°1666/PR/PM/MPE/2017 establishing the terms and conditions for the production, transmission and distribution of electrical energy.
- Decree N°1839/PR/MPME/2019 relating to the organisation and functioning of the Agency for the development of rural and the control of energy (ADERM);
- Decree No. 1840/PR/MPME/2019 establishing the terms and conditions for the supply and access of third parties to electricity networks;
- Decree N°1841/PR/MPME/2019 relating to the conditions and modalities of delivery of electricity production license;
- Decree N°1842/PR/MPME/2019 relating to the organisation and functioning of the Regulatory Authority of the energy Sector (ARSE);
- Decree N°1843/PR/MPME/2019 establishing the conditions for the transmission of electricity from renewable energies and for the sale of surpluses to distribution license owners.

Fiscal regime and taxation regime

The power and electricity tax regime applicable in Chad are the standard tax regime.

Regulatory Framework

The key institutions involved in the power and electricity sector include:

- the National Assembly;
- the Ministry of Energy and Petroleum;
- the Regulatory body of electric power sector (Organe de Régulation du Secteur de l'Energie Electrique) created in December 2018;
- the national utility (Société Nationale d'Electricité);
- the national agency for the development of renewable energy (l'Agence de Développement des Energies Renouvelables (ADER-Tchad))

Local Content Regulation

The law regulating the generation, transport and distribution of electricity dates to 1999. It enables the state to delegate the management of these services to one or several independent legal entities under Chadian public or private law.

This law also provides for a regulatory authority responsible for overseeing the application of the regulation, proposing the rates to the government for approval, approving the multi-year investment program, and approving the award of government contracts in the sub-sector. The creation of this authority has so far not occurred. The Chadian government decided to adopt an energy policy letter for the period 2018-2030. Several laws relating to the Energy Policy Letter have been proposed for adoption during a conference on 17, 18 and 19 August 2018. These laws have however is yet to be adopted.

Forms of contracts

The production, transmission and distribution of electric energy in Chad is the exclusive domain of the State. The State can delegate the management of electrical energy in the form of a delegation contract. The delegation contract includes:

- the concession contract;
- the affermage;
- the Régie Interested;
- the management contract; and
- any contract which has the effect of entrusting all or part of the execution of the public service mission to a public or a private legal person.

Incentives in the Industry

- Temporary exemption (5 years): Any new incorporated company exercising in the sector of renewable energies may be exempted from the following taxes:
  - Business license, minimum income tax, fixed tax, apprenticeship tax;
  - Reduction of 50% of the taxable base of corporate income tax (at the rate of 35%);
  - Reduction of 50% of registration fees.

- VAT exemption:
  - The acquisition of equipment and materials for the production and the promotion of renewable energy and the provision of services related to the production and the promotion of renewable energy are exempt from VAT;
  - The interests on loans for the financing of renewable energies are exempt from VAT;
  - Electricity produced by SNE and any independent producer are exempt from VAT.

Customs duties: Materials and equipment for renewable energies are exempt from customs duties

Cote d'Ivoire

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Oil and Gas Sector

Brief overview of the Oil & Gas development in Cote d'Ivoire

Côte d'Ivoire lies on an area between tectonic plates called the West African transform margin, which has yielded significant oil discoveries for its eastern neighbour, Ghana. Authorities hope that similar discovery could be made in Ivorian waters.

Currently, the players in the country's oil & gas industry is relatively small and peak production is around 90,000 bpd. But the authorities have launched an ambitious exploration program to reach 200,000 bpd rapidly.

By 2015-year end, Côte d'Ivoire had identified 61 blocs in its basin and 29 are already attributed, four are currently in production, and two are under evaluation and the rest being explored. At the end of 2017, five new PSCs were signed with partners BP and Kosmos Energy. Tullow Oil has also signed for 6 blocs and French Bouygues (SECI) has signed for 2 blocs around the same period.

In 2019 and in early 2021, changes were made to the Special Tax Regime (STR) applicable to foreign oilfield services companies (OFS). The revised special tax regime includes 2 tax rates (6% for exploration and 2.17% for exploitation) for the taxation of OFS under this regime. The STR covers deemed dividend tax and payroll taxes.

Political Updates

Presidential elections in October 2020 created some localized troubles due to boycott by most of opposing political parties.

The Presidential election was won by Ouattara, but his third term has emboldened the opposing parties.

Former President Laurent Gbagbo, who has been set free after his trial by ICC, is set to return in Ivory in 2021. Political analysts think that this is an opportunity for a true reconciliation. But some warn that this could lead to a more tense political competition.

Economic Updates

The Treasury has been closely enforcing Central Bank's rules pertaining to the repatriation of the proceeds of exports and to the control/restriction on payments made to overseas partners. Some transactions have been slowed down because of these rules including some oil & gas operations.

Fiscal and Taxation regime

The fiscal and taxation system of oil & gas activities are based on the provisions of the Petroleum Code enforced on 29 August 1996, the General Tax Code and petroleum contracts.

The taxation regime of the industry is mostly based on production sharing contract as it is the most common form of contract for the petroleum operations:

- Royalty and bonus payment;
- Production sharing with limited cost recovery;
- Derogatory rules for the calculation of the corporate income tax;
- Payment in cash or in kind of corporate income tax;
- Several tax and customs exemptions applicable to oil & gas companies and their subcontractors;
- Payroll taxes and social contributions are payable under the general tax rules.

Regulatory Framework

The key regulators in the oil & gas industry include:

The Ministry of Petrol and Energy and Renewable Energies: The ministry defines the general policies of the Oil & gas sector;

Direction of the Hydrocarbons: This regulation is saddled with regulating and supervising oil & gas operations carried out under the various contracts.

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

Sub-Direction of Petroleum Operations of the Tax administration (DGI): deals with taxation issues relating to the Petroleum activities.

Forms of contracts

According to the provisions of the Petroleum Code, the Oil & gas exploration and exploitation activities are carried out through Petroleum Contracts, which might be Concession Contracts or Production Sharing Contracts and Services Contracts.

However, the available petroleum contracts are Production Sharing Contracts (PSC) signed by group of oil & gas companies including the National Oil company (PETROCI). The provisions of the PSC cover exploration and exploitation periods as well, and applicable taxes during these phases.

Once a commercial discovery is made, the exclusive authorization for exploitation is issued, covering 25 years. This can be extended (upon request issued at least 12 months before the end of the first period) to 10 more years.

After the first extension, it is possible to apply for another extension (at least 12 months before the end of the second period) for a period to be defined by the Government and the oil & gas companies. The PSC is the most common form of petroleum contracts in Côte d'Ivoire.

Production Sharing Contract ("PSC")

The Côte d'Ivoire Government is the holder of the bloc (one or many fields), and appoints a contractor, comprising mainly a group of oil companies, to conduct petroleum operations in the area. Each oil company has a participating interest in the bloc and the operations are technically conducted by an operator, which is generally the oil company with the bigger participating interest.

PETROCI (the National Petroleum Company of Côte d'Ivoire) is always part of the Contractor. PETROCI is granted a 10% participating interest for free. The initial 10% participating interest of PETROCI may be increased up to 20%. The subscription of the additional participating interest is made upon payment.
The companies forming the contractor provide the funds and bear the risks until commercial production is achieved. Production is allocated in barrels to Cost Oil accrued by the Contractor up to the commercial production, with a recovery limit, then the remaining production (Profit Oil) is shared between the Contractor and the Government using a predetermined sharing formula.

The 1996 Petroleum Code provides that a monthly royalty is determined on the production of the oil companies signing concession contracts, but no Concession Contract has been signed so far. The Petroleum Code provides that oil companies including the Contractor may be required to pay signature and production bonuses.
The signature bonus is paid upon the signature of the PSC and its amounts varies, (based on our experience) from USD 2,000,000 to USD 20,000,000.

For a PSC signed in 2015 (for example), the applicable rates are:

From 0 to 50,000 barrels/day	46% x H
From 50,001 to 100,000 barrels /day	41% x H
From 100;001 to 150,000 barrels/day	36% x H
Above 150,000 barrels / day	32% x H

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

Local Content Regulation

Local content regulations include the National petroleum company being a stakeholder in all exploration and production contracts.

There has been a push for national content in the manpower and award of services contracts in the oil & gas industry.

A local content law, aiming at insuring that local individuals and companies have a preferred access to opportunities for employment and services contracts in the oil and gas industry was adopted by the Government in March 2021. The Law is yet to be adopted by the Parliament.

Incentives within the Industry

The incentives within the Industry include the following:

- Special rules for the computation of the Corporate Income Tax;
- Exemption from other profits and dividend tax that is due on top of corporate income tax;
- All other direct local or national tax relating to petroleum activities and assets used for petroleum activities are exempted;
- Value added tax and tax on banking activities for the acquisition of goods and services relating to the petroleum activities; VAT exemption is processed through an annual VAT exemption certificate;
- Exemption from tax on interest on loans provided by non-resident entities for investment development;
- Exemption from customs duties on the import of equipment and goods used for the petroleum operations. The exemption is granted to a list of equipment and chemicals that are approved by the government; administrative fees for import of 2.5% are still applicable.

The Petroleum contracts generally provide that, except the corporate income tax is paid in kind or in cash, the oil companies benefit from a general tax exemption, which is entitled to cover all the due taxes, contributions, levies, duties applicable to the petroleum operations.

The tax administration is however restricting the general exemption clause in the PSC, to the single taxes listed as exempted in the petroleum contracts. Most of the tax exemptions are extended to the vendors and sub-contractors of the oil companies by the petroleum contracts.

The oil companies with petroleum contracts do not qualify for the general tax incentives provided by the Investment Code.

Taxation regime

Direct taxation

The applicable tax regime to oil & gas operations in Côte d'Ivoire is a mix between the tax provisions included in the contract signed with the government (PSC) the tax provisions of the 2016 Petroleum Code and the general provisions of the Tax Code for the items not specially dealt with by the Contract and the Petroleum Code.

Any oil company categorized as a contractor benefits from the tax features in the PSC.

The most important feature in the last PSC is that the Corporate Income is included in the production share received by the government. In practice, the oil companies calculate the due corporate income tax according to the general tax rules in the General Tax Code with the specificities included in the PSC, but do not actually pay the due tax. Oil companies receive a corporate income tax clearance certificate when the Government (through PETROCI) receives its production share. Only a few PSCs include payment of the Corporate income tax.

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

- The taxable revenue of oil & gas companies includes the following:
  - Revenue directly deriving from the sale of its share in the produced oil & gas;
  - Any revenue deriving from the Petroleum Operations, including the sale of deriving minerals, treatment, transportation stocking services provided to third parties through infrastructures dedicated to the petroleum activities;

- Capital gain deriving from the transfer of assets including PSC interest (farm out – farm in), unless the payment is made in kind;
- Any exchange gains.

▪ The expenses deductible from the basis of the CIT include the following:

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

Withholding tax

Services

Withholding tax is levied at the rate of 20% on remuneration (consulting fees, management fees, services, remuneration, lease equipment, royalties etc.) paid by a Côte d’Ivoire resident to a foreign service supplier without a permanent establishment in Côte d’Ivoire.

The applicable double tax treaties will generally avoid the withholding tax unless the service qualifies as a royalty or management fee (DTT with UK).

Dividends

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

Royalties

The general withholding tax on royalties is 20%. The rate is generally reduced for countries with double taxation treaties to 10%.

Interest

The general interest withholding tax rate is 18%.

The applicable withholding tax rate may be reduced to 15% where the recipient is a resident of a country that has concluded a double tax treaty with Côte d’Ivoire. Côte d’Ivoire has signed 11 bilateral double tax treaties and a multilateral tax treaty with French speaking West Africa countries.

The Hydrocarbons Code does not apply any withholding taxes on companies carrying out exploration and exploitation activities through a local permanent establishment.

Thin capitalisation and Transfer Pricing

Thin capitalisation rules have been adopted in Côte d’Ivoire in 2018 regarding the deduction of interest on related parties’ loans. Equity to debt ratio for interest deduction is 1:1.

An arm’s-length approach to transfer pricing applies. All companies that have transactions with related parties outside Côte d’Ivoire must file together with its annual financial statements (by end of May or end of June) a special TP form which discusses the pricing of the related parties’ transaction. Failure to file such form results in the disallowance of the expenses paid to related parties abroad.

We have experienced that Petroleum contracts can include more favourable rules about the conditions for the deduction of interest on related parties’ loans.

Double Tax Treaties (DTT)

Côte d’Ivoire has concluded 11 bilateral DTTs. Since 2015, 3 DTTs have entered into force:

- The DTT with Morocco in June 2015;
- The DTT with Tunisia in June 2015; and
- The DTT with Portugal in November 2016.

Indirect Tax

Value Added Tax (VAT)

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

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

Petroleum exploration and exploitation operations are exempted from VAT, so that the oil companies do not have to file VAT tax returns, unless they have other activities. The VAT exemption is processed through VAT exemption certificates.

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

Customs and Excise Duties

Customs duties in Côte d'Ivoire are levied only on 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 UEMOA Zone.

Oil companies are entitled to import in Côte d'Ivoire equipment, to be re-exported under suspension customs regime.

Goods and materials consumed for the petroleum operations are exempted from customs duties upon import. The exemption procedure involves that the Direction of Hydrocarbon (DGH) confirms that the imports relate to petroleum operations.

Other Taxes

The following taxes are applicable to the contractor where they are not expressly exempted by the PSC or the Petroleum Code.

Capital Gains tax (CGT)

Capital gains realized by residents are taxable together with the corporate income tax. There is no special tax on capital gains. The transfer of participating interest in PSC is subject to a fixed fee of USD 100,000 per transfer.

Payroll related taxes

Personal income tax is withheld at source by the employer according to a progressive scale (up to 60%) on a discounted revenue of the employees which considers their family status for reduction.

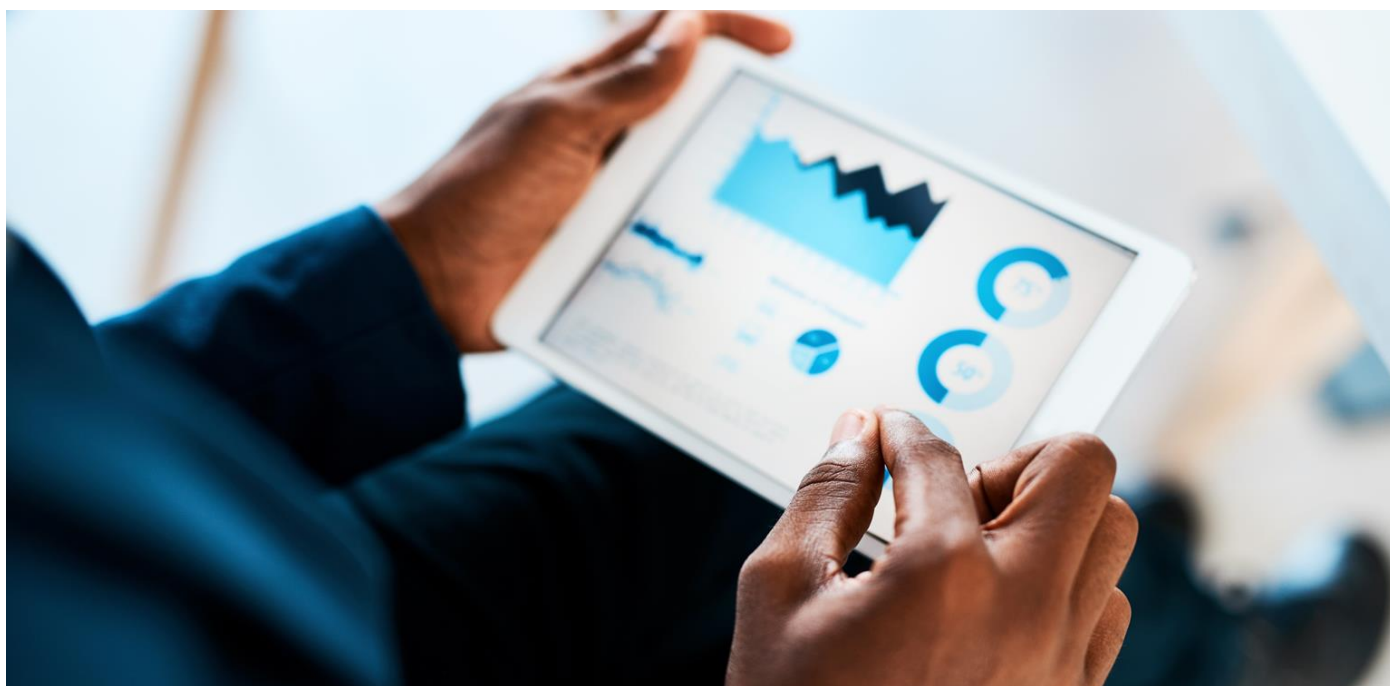
Employers' contribution to payroll taxes in exempted by most of the PSCs.

Social security contributions

The social contributions are due by the oil companies based on the wages paid to their employees. Social contributions include family allowance contributions, work injury contribution and pension contributions.

Particulars	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%	2,700,000*

*Change as of January 2021



Land taxes, registration fees and stamp duties are exempted as per the Petroleum Code and the PSCs.

Taxation of Oil Field Services (OFS) companies

OFS companies are not subject to the same taxation regime as exploration and production (E&P) companies. OFS can choose between the common tax regime and the Simplified Tax Regime (STR). Regardless the tax regime they choose, OFS still benefit from the tax exemptions that are included in the PSC and are specifically extended to them.

The STR is a deemed profit regime which covers the following taxes:

- Tax on Dividend;
- Payroll taxes.

The 2019 FY Financial Law has confirmed that CIT and Insurance tax are exempted under the STR.
OFS under the STR are not subject to accounting requirements in Côte d'Ivoire.

Deemed Profit Taxation

as the basis of the taxes above listed.
There are two rates for the STR taxes, as below outlined, applicable on the taxable revenue of OFS companies:

- 6% for services during exploration;
- 2.17% for services during exploitation.

Compliance requirements

Annual corporate income tax (CIT) return:

The corporate income tax return and the annual financial statements must be filed in the 3 months following the end of the tax year (31st December).

Depending on the content of the PSC, the due CIT will not be paid, and the Government will issue payment certificates based on the share of oil production it will receive.

Monthly returns

In Côte d'Ivoire, withholding tax on remuneration paid to employees, or remuneration paid to non-resident 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 unique tax return form.

This form must be filed within the 10 days following the end of the month of the remuneration payment.

Annual declaration of wages and salaries (Etat 301 + DISA)

Oil companies are required to file an annual declaration of salaries on Etat 301 form. The form requires details of the beneficiaries (local or expatriate), as well as the gross payment, the tax withheld, the net payment, and the period to which the payment relates. Employers paying wages and salaries must file the declaration before May 30 (companies not subject to statutory audit) or June 30 (audited companies), of each year.

DISA is filed with the social security body by 30 March each year.

Annual declaration of fees (Etat 302)

Oil companies are required to file an annual declaration of remuneration paid on Etat 302. The form requires details about the beneficiaries, their address as well as the gross payment received.

The Form must be filed before May 30 or June 30.

Statute of limitation

In Côte d'Ivoire, the statute of limitation expires at the end of the third financial year following that for which tax is due.

Tax audits

Tax audits are carried out by tax authorities following an audit program. A tax audit's frequency may vary depending on the business activities. In this framework, many companies operating in resale activities are subject to a tax audit every 3 years.

Power and Utilities Sector

Brief overview of the Power and Utility developments in Côte d'Ivoire

The steady economic growth in Côte d'Ivoire for the past years had brought deficiencies in the energy supplies propelled by increase in household consumption and industrial activity. The growth in demand is about 10% yearly. However, the net electricity production has only grown annually by 2%.

In a bid to catch up on demand and optimize regional opportunities, Côte d'Ivoire has allocated in 2017 USD 4 billion for investments in the energy sector for the six years.

The Government is encouraging private sector to ramp up electricity production in line with its ambition to increase capacity to 4,000 MW by 2020, up from around 1,600 MW in 2013.

Since most power plants are fueled by gas, the Government is encouraging investment in LNG projects, which first is led by French Total SA.

There has been a big push on solar power generation in the Northern part of the country with 6 project totalizing 200 MW to start production in 2020 and 2021.

Agreements for an important Biomass project have been signed with French EDF.

Economic Updates

The Côte d'Ivoire government is working to increase hydro-electric facilities contribution to energy mix up to 60%, including the construction of 6 new plants expected to be completed in 2017 and 2018. The government has new plans for alternative renewable sources such as solar, wind and biomass. Since most power plants in the country are fired by gas, the government is encouraging investment in LNG projects, which was first led by French Total SA.

Legal Framework

According to the provisions of the Electricity Code enforced by Law n°2014-132 dated 24 March 2014, the power generation activities are only possible in Côte d'Ivoire by private operators through a convention signed with the Government.

The Convention is annexed with specifications that apply to the construction, exploitation and maintenance of the power generation facilities.

In most of the cases, CI-ENERGIES will have participating interest in the local power generation company.

The Conventions are typically based on Built Own Operate and Transfer (BOOT) models for periods of up to 35 years, with possible extension.

Fiscal regime

The main regulatory framework for the taxation of Power and Utility sector in Côte d'Ivoire is the Côte d'Ivoire General Tax Code, since the Electricity Code does not include special tax regimes.

The Investment Code also plays a significant part in the taxation of the Power and Utility sector because the sector falls in the range of the Investment Code.

Regulatory Framework

The key regulators in the power and utility sector include:

- Ministry of Petroleum and Energy
- ANARE: Regulator of the Power and Utility sector.
- CI-ENERGIES: a public company in charge applying Government policies in the Power and Utility sector;
- Sub-Direction of Energy activities of the Tax administration (DGI): deals with taxation issues related to the Power and Utility sector.

Forms of contracts

According to the provisions of the Law no 2014-132 dated March 24th, 2014 related to Electricity Code the power generation activities are only possible in Côte d'Ivoire by private operators through a convention signed with the Government.

The Convention comes with additional specifications that apply to the construction, exploitation and maintenance of the power generation facilities. In most of the cases, CI-ENERGIES will be having participating interest in the local power generation company.

The Conventions are typically are based on Built Own Operate transfer (BOOT) model for periods of up to 35 years, with possible extensions.

Local Content Regulation

There are no mandatory requirements for local content in either procurements or employment in the Power and Utility sector. However, in practice, the Government recommends using local vendors as much as the service is available locally.

Taxation regime

While the Electricity Code provides that the utility companies with a concession agreement can be granted a special tax regime, in practice, the utility companies only benefit from the tax incentives provided in the investment code, as the Government is now reluctant to provide incentives to the Energy sector outside the investment code.

The Energy and Utility sector is not eligible to other tax incentives, as it falls within the Investment Code incentives.

For the application of the Investment Code, Power and Utility projects will fall into Category 2 investments, which can benefit from the following:

- During Investment Phase: exemption from Customs duties on imported equipment for the project and suspension of VAT on the acquisition of equipment and services for the project;
- After the completion of the Investment Phase: CIT credit ranging from 25% (Zone A), 35% (Zone B) to 50% (Zone C). The different zones refer to the location where the investments are realized. Zone A refers to the economic capital city (Abidjan), Zone B to other important cities and Zone C to smaller cities.

Direct Taxation

The applicable tax regime to power and utility sector is the same tax regime as the general tax regime applicable in Côte d'Ivoire. In the past, the Côte d'Ivoire had included some special tax regimes in the contracts signed for the power generation contracts (concession agreements).

Since the adoption of the new Electricity Code, government has become reluctant to include special tax regimes in the concession agreements for power generation. The latest projects are therefore subject to the general tax regime and they can benefit from the general tax incentives provided in the Investment Code.

These are the most important features of the Investment Code:

Investment Sectors

The eligible economic sectors have been classified in 2 categories in the Investment Code:

Category 1: Projects in agriculture, agro-industry (food processing) hotels/hospitality and health sectors.
For hotel and hospitality industry, the projects qualify for Category 1 only when the amount of the investment equals or exceeds:

XOF 5 billion for Zone A;
XOF 2 billion for Zone B & C.

Category 2: This Category includes all projects in sectors which are not excluded from the benefit from the Investment Code and not listed in the Category 1, and project for the hotel and hospitality industry which do not reach the thresholds.

Investment in power generation are classified in Category 2 by default.

Structuring projects

A structuring project is an important project based on the amount invested, the number of direct employees, its impact on the economy of the region or the country.

The threshold for investment in structuring project is XOF 15 billion in Zone C, XOF 50 billion in Zone B, and XOF 100 billion in Zone A.

A power generation project which meets the above threshold could qualify as a structuring project and benefit from a special tax regime agreed with the Côte d'Ivoire Government.

Investment Zones

For the application of the Investment Code, the territory is divided into 3 zones (A, B & C).

- Zone A: Abidjan district (capital city);
- Zone B: Region major cities, Bonoua and Grand Bassam;
- Zone C: other cities and areas out of Zone A & B.

The location of the investment in a specific location determines the investment zone.

Tax incentives during the investment period:

Utility companies with a concession agreement, after being granted the benefit from the Investment Code, enjoy:

- exemption from customs duties on imports, except the statistic fee and community levies;
- temporary suspension of the payment of the VAT due on the purchase of goods, services and works, when the activity of the company is subject to VAT;
- exemption from VAT on the purchase of goods, services and works when the activity of the company is not subject to VAT.
- The exemption covers local purchases as well as imports, based on the list of equipment. It covers the equipment and the first batch of spare parts.
- The maximum value of exempted spare parts is limited to a proportion of the acquisition value of the equipment (10% in Zone A, 20% in Zone B and 30% in Zone C).

Tax incentives after the completion of the investment program (Operational period):

The utility company will enjoy the following;

- a tax credit of 25% of the total amount of investment for the Project (for Category 2 in Zone A);
- a tax credit of 35% of the total amount of investment for the Project (for Category 2 in Zone B).
- a tax credit of 50% of the total amount of investment for the project (for Category 2 in Zone C);

The tax credit is applicable against the following taxes:

- CIT (and Minimum Tax);
- Business license tax;
- Real estate tax;
- VAT;
- Payroll tax due by the employers on the remunerations paid to the employees.

Social security contributions

The social contributions are due by the power and utility companies based on the wages paid to their employees. Social contributions include family allowance contributions, work injury contribution and pension contributions.

Land taxes is permanently exempted according to the Investment Code,

Registration fees and stamp duties are applicable to the utility companies with a concession agreement.

Incentives in the power and utility industry

While the Electricity Code provides that the utility companies with a concession agreement can be granted a special tax regime, in practice, the utility companies only benefit from the tax incentives provided in the Investment Code.

Egypt

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Oil and Gas Sector

Brief overview of the Oil & Gas development in Egypt

Between 1963 and 1976, Egypt applied the “Tax & Royalty Agreements”. Based on this type of agreement, royalty and taxes were paid as a percentage of the oil explored. However, starting 1976 until present, “Production Sharing Agreements were used instead of the Tax & Royalty Agreements.

In this type of agreement, part of the explored and produced oil is called “Recovery Oil”. The foreign investor takes 100% of this recovery oil to recover the costs incurred by him during the exploration and development phase.The other part of such oil is called “Profit Oil” and is divided between the foreign investor and the Egyptian General Petroleum Corporation (EGPC).

Based on such agreement, EGPC pays the taxes and the royalty on behalf of the foreign investor.

Political Updates

The Egyptian president Abdel Fattah el-Sisi and his government intend to stabilize the political situation and enhance the economic growth of the Egyptian market through the COVID-19 pandemic. In doing so, the Egyptian president and his government have been engaged recently in various initiatives to promote political stability within the country and enhance the financial performance of it.

One of the initiatives was the latest visit of the Egyptian president to Berlin on the 19th of November 2019, to attend the G20 Initiative Compact with Africa which tackled the Egyptian government’s willingness to extend the Egyptian cooperation with Germany in respect to matters related to security issues.

It is also worth highlighting that the Egyptian government is currently building a new city from scratch that is planned to be the new administrative and financial capital of Egypt. Therefore, it is expected that the Egyptian parliament, the presidential palace, the governmental ministries, the CBE, the main airport as well as the foreign embassies will be shifted to the new capital of Egypt.

Economic Updates

The COVID-19 pandemic that invaded the world and has started in Egypt in March 2020, has caused interruptions in the overall macroeconomic stability of the country, as the economic activities started to slow down according to the social distancing measures and the temporary suspension of air traffic.

This in turn led the Egyptian government to take precautionary measures, whereby it allocated an emergency response package worth LE100 billion (1.7% of GDP) to increase health expenditure, scale-up social protection, and provide financial relief for individuals and businesses.

Key measures included a one-off monetary grant to irregular workers and the expansion of existing cash transfer programs. Forbearance measures were introduced as well, in the form of delayed tax filing and loan repayments, in addition to subsidized credit for targeted sectors. The Central Bank of Egypt minimized policy rates by a cumulative 350 basis-points since March 2020 to ease liquidity.

Inflation has been declining since end of 2019 and has remained rather contained, registering an average of 5.7% in the fiscal year 2020 (from an average 19.6% in the previous 3 years), reflecting the low demand and the general decline of global commodity prices, including oil.

In addition to the above-mentioned measures, also in response to the COVID-19 pandemic, the Egyptian Government issued new laws tackling the amendments that were introduced for real estate tax, social insurance and pensions' law, personal income tax and financial penalties; as means to maintain tax fairness and proper tax regulations within the country.

These new laws were enacted to stipulate the governing rules for applying some of the COVID-19 Egyptian tax measures, granted by the Egyptian Government as means to facilitate the taxpayers' obligations/ procedures during this unprecedented situation.

Its provisions are only applicable to individuals, companies and entities, which operate in the economic, production and service sectors that have been identified by the Egyptian Cabinet as negatively impacted by the COVID-19 aftermath.

Fiscal regime

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

The petroleum operations in Egypt are classified as the upstream, midstream and the downstream operations. Please note that the concession agreement law only governs the upstream business, while the midstream and downstream are taxed normally.

Regulatory Framework

The Upstream industry

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

The upstream industry pays different types of bonuses such as the "Signature and production bonuses" that are payable to the government for each of the respective Petroleum Concession Agreements.

The Downstream Industry

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

The Midstream Industry

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

The key regulators in the oil & gas industry include:

- The Egyptian Ministry of Petroleum is the governmental authority responsible for the regulation and development of the oil & gas sector in Egypt and it acts mainly through the following entities:
- The Egyptian general petroleum company ("EGPC"): is an Egyptian state-owned oil company that operates under the guidance of the Egyptian Ministry of petroleum. The EGPC is fully responsible and actively involved in all sectors of the Egyptian petroleum industry (upstream, midstream and downstream activities). As a controller of the industry, any

foreign investor should enter into a joint venture with the EGPC in order to invest in the oil & gas sector.

- The Egyptian Natural Gas Holding Company ("EGAS"): is an Egyptian state-owned company that has been originally established to focus on the natural gas activities. EGAS is responsible and involved in a wide range of activities including upstream, midstream and downstream activities of natural gas in Egypt.
- Ganope El-Wadi Petroleum Holding Company ("Ganope"): is an Egyptian state-owned company, responsible for all oil exploration and exploitation activities taking place in the southern region of Egypt.

- In addition to EGPC, EGAS and Ganope, there are foreign as well as Egyptian private sector companies operating in the Egyptian petroleum sector. Such companies operate in Egypt by concluding concession agreements with the relevant governmental entity (i.e. EGPC, EGAS and Ganope) in order to grant them the exploration and exploitation rights for certain concession areas within the periods agreed on in the concession agreements.
- As for the taxation of the oil & gas activities, the ETA is the party responsible for the taxation issues.

Forms of contracts

The most common type of petroleum contracts in Egypt is the concession agreement (under the production sharing agreement system that is currently used in Egypt). Concession agreements are concluded in Egypt between the relevant governmental entity (i.e. EGPC, EGAS and Ganope) and the interested investor (whether Egyptian or foreign) in order to grant the latter with the rights of exploration and exploitation of oil & gas resources in Egypt.

The relevant government entity (i.e. EGPC, EGAS or Ganope) leads the negotiation with the interested investors about the terms and conditions of the concession agreement; and once a mutual consent is reached by the parties, the draft concession agreement should be submitted to the parliament for approval. Following the approval of the parliament, a law would be specifically issued to apply such approved concession agreement.

Such law provides the relevant governmental entity (EGPC, EGAS or Ganope) with the right to conclude such concession agreement with the interested investor. In Egypt, the concession agreements generally follow a standard format with few differences which depend on the terms and conditions agreed upon between the parties of each agreement.

It is worth noting that, the Egyptian government is working on the details of a new type of oil & gas contracts that is expected to attract more foreign investments into the Egyptian oil & gas sector. Based on our knowledge, this new type of oil & gas contracts would allow the investors to control their share of production rather than selling it to the Egyptian government at preset prices.

Local Content rules

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

Taxation regime

Direct Taxation

Corporate Income Tax

The corporate income tax rate applicable on the Upstream activities is 40.55%, and as previously mentioned, taxes applicable on the Upstream activities shall be borne by EGPC.

EGPC is the final bearer of the tax burden; and as per most of the concession agreements, the corporate tax due is paid by EGPC after grossing up the taxable base. However, it is worth mentioning that, the exploration entities should be the parties calculating the corporate income tax due based on EGPC's assessable income and should have their calculations reviewed and confirmed by EGPC.

Furthermore, EGPC should pay directly the tax due to the ETA and this is the case for all the active concession agreements. Having said that, the tax returns prepared by the exploration entities should in such context be reviewed, approved and signed by EGPC.

On the other hand, the midstream and the downstream activities are taxed normally and so the profits realized from such activities would be subject to corporate income tax at the rate of 22.5%.

Royalty

The Egyptian government is entitled to receive a royalty payment, and this is to be paid to it by EGPC.

Withholding tax

The upstream activities are exempt from WHT on payments made against the exploration and production activities.

For the midstream as well as the downstream activities, there is a local WHT (prepaid tax) on payments made from a local entity to other local entities for transactions exceeding EGP 300. This tax is considered as a prepayment of the corporate income tax. Below are the local WHT rates:

- Contracting and supplying 1%
- All types of services 3%
- Commissions 5%

On the other hand, payments made by a resident company to a non-resident one against such services should be subject to WHT at the rate of 20%. For royalty and interests paid by a resident to a non-resident, withholding tax of 20% should also be applied.

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

- Shipping;
- Transport and Freight;
- Direct advertising and 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.

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 recipient's country of residence.

Please note that the Ministerial decree no. 711 of 2009 required that Egyptian entities initially to apply 20% WHT on payments against royalties and interest regardless of potential treaty relief / reduction. The offshore recipient is required to apply for a refund of the difference afterwards (between to the 20% domestic rate and WHT rate mentioned in the relevant treaty). The submission of such a refund claim should be within six months from the date of receiving the income.

However, certain amendments were made to the executive regulations of the Egyptian income tax law and the interpretation to such amendments is that the "withhold and reclaim refund" procedure mentioned above should no longer be applicable. Yet, in practice the ETA still expects such procedure to be followed by the taxpayer and so the Egyptian entities still withhold the 20% tax.

Dividends Tax

For midstream and downstream activities, dividend distributions made by Egyptian companies whose shares are unlisted on the Egyptian Stock Exchange ("EGX") are subject to a 10% WHT, while dividends made by Egyptian companies whose shares are listed on the EGX are subject to a 5% rate.

It is worth mentioning that, dividends distributed to non-residents could be reduced/eliminated under the relevant double tax treaty.

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

This tax does not apply to the upstream business.

Double Tax Treaties (DTT)

Egypt has entered with over 55 countries in double tax treaties (DTTs) in order to avoid double taxation of income and to prevent tax evasion and tax avoidance.

The Egypt- Saudi Arabia DTT was signed in April 2016 after being ratified by the Saudi Arabian Council of Ministers. The provisions of the DTT entered into effect on the 1 January 2018 after being in forced starting from the 1 July 2017.

It is worth highlighting that Egypt recently signed a new DTT with Cyprus on the 8 October 2018. The new DTT has been in forced on 31 July 2020, and was effective on January 1st, 2021, whereby replaced the Egypt-Cyprus DTT which has been signed back in 1993.

In addition, Egypt's new DTT with Bahrain, was signed in April 2016, took effect starting 1 January 2019. This treaty replaced the old DTT that was signed in September 1997.

It is also important to mention that Egypt signed the OECD Multilateral Instrument ("MLI"), under the Base Erosion and Profit Shifting Project (“BEPS”) on 7 June 2017. Such agreement requires the implementation of the minimum standards action points of the BEPS Project (i.e. four actions only for the time being) in order to cope with the dramatic changes being introduced to the tax environment globally.

Participation exemption

The participation exemption rule should apply on the dividend income received by an Egyptian resident company from its subsidiary; whereby only 10% of such dividend income received should be subject to the 22.5% CIT in Egypt, if the following conditions are met:

- The Egyptian resident company holds at least 25% of the share capital or the voting rights of the company distributing the dividends; and
- The Egyptian resident company holds or commits to hold the shares for at least two years.

It is important to note that this is not relevant to the upstream business.

Capital gains tax

Sale of listed securities:

Capital gains realized from the sale of listed Egyptian securities by resident shareholders are subject to a 10% CGT. However, the application of this tax has been put on hold until the end of 2021.Please note that, such suspension of CGT should not be applied to the capital gains realized from the disposal of government bonds

Whereas, for the non-resident shareholders, based on the latest amendments made to the law, the capital gains realized from selling their listed securities will be permanently exempt from CGT in Egypt.

Please note that the upstream activities are not subject to capital gains tax.

Sale of unlisted securities:

Capital gains realized from the sale of unlisted Egyptian securities on the EGX by both resident and non-resident shareholders, are subject to CGT in Egypt at the rate of 22.5%.

It is important to note that the upstream activities are not subject to capital gains tax.

Concession Agreements

In Egypt, most of the concession agreements provide protection against the taxes applicable to capital gains, and dividends. The above taxes applicable to capital gains and dividends should not apply.

Transfer Pricing (TP) Regulations

Transfer Pricing ("TP") rules were issued in Egypt as part of a tax law enacted in 2005. The law contains an anti- avoidance article as well as an article in the executive regulations that provides guidance on the methods to be used in establishing the arm’s length price.

The TP regulations follow the arm’s-length principle, specifying that any transactions between related parties should be at arm’s length (i.e. the market value). Since the issuance of the 2005 law, corporate tax returns have had a disclosure requirement for related party transactions and transfer pricing.

According to the Law a related party is defined as any person related to a taxpayer by a relation affecting the determination of the taxable base, including:

- The husband, wife, ascendants, and descendants;
- Associations of capital, and the person possessing, directly or indirectly, at least (50%) of the number or value of shares or voting rights in them.
- Partnerships, joint partners, and silent partners therein;
- Any two or more companies in which a third person possesses at least (50%) of the number or value of the shares or voting rights in each of them.

In 2010, the ETA issued the first part of the TP guidelines, which followed the Organization of Economic Cooperation and Development (“OECD “)'s TP guidelines. The first part of the Egyptian transfer pricing guidelines ("ETPG"), provided guidance on the following points: the arm’s-length principle, the method of establishing comparability, the choice of the most appropriate transfer pricing method(s), and the documentation requirements.

The Egyptian Minister of Finance has issued a Ministerial Decree published in the official Gazette on 22 May 2018, amending some provisions of the executive regulations of the income tax law that relate to the Egyptian TP regulations, whereby the application of the hierarchy of the TP methods was abolished. As per the updated transfer pricing guidelines, the acceptable methods are listed as follows:

- Comparable Uncontrolled Price Method;
- Cost plus Method;
- Resale Price Method;
- Profit Split Method; and
- Transactional Net Margin Method.

Such amendments were a prelude to the Final Egyptian TP guidelines which were released recently on the 23 October 2018. The headline changes presented in the updated ETPG are the three- tiered approach to Transfer Pricing documentation and the introduction of the advance pricing agreement (“APA”) program.

In addition, the updated ETPG allows taxpayers to use other methods if none of the listed methods can be applied on the considered transactions.

However, the ETA expects the taxpayers to first maintain and prepare sufficient documentation to explain the reason why those methods cannot be reliably applied on the transaction. Moreover, the updated ETPG includes a statement the ETA considers the “Global Formulary apportionment” as the least reliable method to be used in determining the arm’s length price of the controlled transaction. And in any case, the comparability analysis should be performed to select the appropriate transfer pricing method.

The Three- tiered approach to TP documentation:

The updated ETPG introduced the three-tiered approach to TP documentation and it includes the mandatory filing of namely, the master file, local file and the country by country (“CbC”) reporting. The ETA confirms that the new documentation requirements shall be implemented for fiscal years ending the 31 December 2018, and it shall be applied on the consolidated reporting periods (for financial statement purposes) and not the taxable years or the financial reporting periods of subsidiary entities.

The CbC reporting facilitates the reporting process for multinational enterprises (“MNEs”). The CbC report provides a template for MNEs to report annually and for each jurisdiction the necessary information relating to the MNE’s global allocation of income, taxes paid, and other indicators regarding the economic activity in order to assess the overall related party transactions taking place between affiliated enterprises within the same group.

The threshold for the CbC reporting is set out in the ETPG as follows:

- Egyptian parented groups with a foreign subsidiary(s) with an annual consolidated group revenue of equal or exceeding EGP 3 billion (€145 million) will be required to prepare and file a report with the ETA.
- Egyptian subsidiaries of foreign parented groups will be subject to the OECD's threshold of €750 million and required to file a report with the jurisdiction in which the ultimate parent entity is resident.
- The ETPG confirms that the taxpayers are required to prepare and submit their TP documentation on an annual basis.

Documentation filing deadlines:

- The master file should be prepared in accordance to the taxpayer group’s ultimate parent’s tax return filing date and made available to the ETA in “due course” i.e. at the same time of the Parent entity’s Master file submission date.
- The entity by entity local files must be submitted to the ETA within two months following the date of filing the tax return.
- The CbC report should generally be submitted one year following the close of the relevant financial year that it covers. The first CbC report should be prepared for the group’s financial year ending December 2018. Moreover, the CbCR notification forms should be submitted before the end of the fiscal year to which the report relates.

Unified Tax Procedure Law:

The Government has recently issued the Unified Tax Procedure Law, whereby it is introducing a threshold for the related party transactions, and detailing penalties in relation to the failure of submitting the three-tiers of the transfer pricing documentation.

- The new law has introduced a threshold for taxpayers who engage in commercial or financial related party transactions of EGP 8 million or more, whereby, taxpayers who reach or exceed such threshold should prepare and submit the three-tiered TP documentation requirements
- Taxpayers who fail to disclose their related party transactions (in the relevant section of the CIT return) will be subject to a penalty of 1% imposed on the total value of related party transactions in the respective year.

- Additionally, taxpayers who fail to submit Local file will be subject to penalty of 3% of the total value of related party transactions, 3% for failure to submit the Master file and 2% for the failure of submitting the CbCR and CbCR notification forms. This will be applicable from FY2020 going forward and is capped at 3% of the total related party transactions.
- A penalty of EGP 3K up to EGP 50K should be applicable if the taxpayer didn't comply with the TP three-tiered filing requirements for a period not exceeding 60 days from the tax return due date.
- A penalty of EGP 50K up to EGP 2M should be applicable if the taxpayer didn't comply with the TP three-tiered filing requirements for a period exceeding 60 days from the tax return due date.

Advance Pricing Agreement:

The APA system provides Egyptian taxpayers with the benefit of agreeing in advance with the ETA on the methods to be followed by the taxpayer to determine arm's length arrangements acceptable for tax purposes when it comes to related party transactions.

Such APA program should deliver benefits to the taxpayers such as the certainty on TP methods, tax outcomes, increased transparency and reduced risks of audit and penalties.

The APA program was introduced for the first time in Egypt in 2018 and accordingly, the ETA decided to adopt the unilateral APA(s) at this stage and to introduce the bilateral and multilateral APA(s) in the future. In addition, the option to apply for the APA is open to all the taxpayers subject to the provisions of the law including the Permanent establishments.

The Guidance on the APA program is contained within a new part two of the EGTP, which describes the mechanisms, procedures and implementation of the program in Egypt. The process of applying the unilateral APA and receiving a reply from the ETA may take approximately 6 months and this may vary according to the case at hand.

The stages of APA administration and application process include:

- A written request for a pre-filling meeting by the taxpayer at least 6 months before an APA is proposed to take effect, including an information package containing information prescribed by the ETA.
- Notification of consensus from the ETA following the meeting followed by submission of an APA application form and accompanying documentation by the taxpayer.
- Review of the APA application and the documentation package by the ETA.
- Evaluation and negotiation of the APA terms followed by APA acceptance and signing (or declining the application).
- Annual filing of an APA compliance report by the taxpayer within 60 days of the tax return filing.

It is worth noting that the ETA gives a priority to complex transactions/ industries opting for the APA (example, oil and gas and digital industries), when transaction involved an associated enterprise located in a low-tax rate jurisdiction or tax havens, Controlled transactions have been audited in the past and in Unique and innovative application of transfer pricing methodologies.

Indirect Taxes

Value Added Tax (VAT)

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

Goods and services are subject to VAT except natural gas, butane gas, production, transfer or sale or distribution of electricity. In addition, Companies are required to register for VAT purposes if they generate revenue in excess of EGP 500k from non-exempted activities or in case of providing goods or services subject to schedule tax, regardless of the revenue generated from sales/production.

The general VAT rate is 14% and should be applied to all goods and services, except for machinery (excluding buses and passenger cars, which are taxed at the standard rate) and equipment that are subject to 5%. Some goods and services are also subject to the schedule tax/ excise tax, which is applied at different rates (e.g. 5%, 10%, etc.) depending on the nature of the good or service.

Oil & Gas Companies are exempt from VAT as long as covered under the concession agreement between the Egyptian government represented by EGPC and oil & gas companies (relevant to exploration and development), however; there is a list that has been amended and agreed with Egypt that includes several items and services that will be subject to VAT.

The Law states a new deadline for the monthly VAT

returns, which is a period of one month from the end of the tax period (which used to be two months, previously). It's important to note that the ETA has announced that September's return could be submitted until the end of November with no penalties.

It is worth mentioning that the ETA has started to implement the electronic invoicing system.

For businesses which involve; i) importation/exportation, ii) ad-hoc provision of a VATable service, where those businesses only engage in a limited number of transactions per year; the taxpayer should be eligible to submit a VAT return only for the month of the relevant transaction. An approval from the head of the tax authority should be obtained for that purpose.

Taxpayers who are not subject to VAT should still register with the ETA's online platform. An annual fee, that does not exceed EGP 500, applies on such registration.

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 being imported.

Other Taxes

Social Security contributions

Egyptian resident employees are liable to Social Insurance from the age of 18 years. Expatriate employees working in Egypt are not allowed to subscribe to the Egyptian social insurance scheme, except in the following cases:

- A reciprocal treaty between Egypt and the expatriate's country allows them to join Egypt's social security program.
- The expatriate's employment contract covers a period exceeding one calendar year.

The Social Insurance Law covers both Egyptian employees and foreign employees whose countries

employees working in Egypt are not allowed to subscribe to the Egyptian social insurance scheme, except in the following cases:

- A reciprocal treaty between Egypt and the expatriate's country allows them to join Egypt's social security program.
- The expatriate's employment contract covers a period exceeding one calendar year.

The Social Insurance Law covers both Egyptian employees and foreign employees whose countries have treaties with Egypt for reciprocal Social Insurance treatments. The countries with reciprocal treaties with Egypt are Greece, Cyprus, Morocco, Libya, Sudan, Jordan, Syria, Iraq, Lebanon, Somalia and Palestine.

Social Insurance Rates:

Egyptian monthly social security contributions are based on two components: basic salary and variable salary.

The Social Insurance Authority has updated the current Social Insurance for the minimum salary to be EGP 1200 (instead of EGP 1000) & the maximum ceiling to be EGP 8100 instead of (EGP 7000).

Therefore, the employee share will be (8100* 11%) = EGP 891, and the employer share will be (8100* 18.75%) = EGP 1,518.75, if the employee's salary is equal to or more than EGP 8,100.

Furthermore, the employer portion has increased to be EGP 1701(21%*8100) instead of EGP 1470. And such instructions should apply as of January 1st, 2021.

The Egyptian Cabinet may defer or allow the Eligible taxpayers to settle all or part of their social insurance contribution on installments (including the employee's and the entity's shares and without calculating any additional amounts), for a period that shall not exceed 3 months (renewable for a similar 3-months period).

Payroll contributions

Individuals are taxed on salaries earned from work performed in Egypt, regardless of where the payment is made as well as on salaries earned from an Egyptian entity, regardless of where the service is performed. In general, this tax is withheld at source from payments to Egyptians and foreign nationals working in Egypt.

Payments include salaries, overtime, bonuses, fringe benefits, allowances and all other payments and benefits. Where, an annual tax is imposed on the total

net income of the resident individuals for income earned in Egypt as well as the income earned outside Egypt for resident individuals whose center of commercial, industrial or professional activities is in Egypt. Also, tax is imposed on the income of non-resident individuals for their income earned in Egypt.

The Egyptian Government introduced several amendments on personal income tax; applied on salaries and the like (starting from the 1st of July 2020) and on income derived from commercial/ industrial/ non-commercial activities and real estate wealth (starting from the tax period that ends after the date of this law's entry into force).

Below is a summary of the key personal income tax law amendments, as provided by the new law.

- The annual personnel exemption is increased from EGP 7K to reach EGP 9K.
- The first income tax bracket (subject to 0% tax) is broadened from EGP 8K to EGP 15K, covering the taxable income of less than EGP 15K.
- Two new income tax brackets are introduced, to capture the taxable income that ranges between EGP 15K to EGP 30K and that amounting to more than EGP 400K.
- The abolishment of the tax deduction system.
- Taxpayers with higher net taxable income are disallowed to avail the lower tax brackets, as per the below:
  - The net taxable income ranging between EGP 600k and EGP 700k, is not eligible for the 0% tax bracket,
  - The net taxable income ranging between EGP 700k and EGP 800k, is not eligible for the 0% and 2.5% tax brackets,
  - The net taxable income ranging between EGP 800k and EGP 900k, is not eligible for the 0%, 2.5% and 10% tax brackets,
  - The net taxable income ranging between 900k and 1000k, is not eligible for the 0%, 2.5%,10% and 15% tax brackets; and
  - The net taxable income of above EGP 1M, is not eligible for the 0%, 2.5%,10%, 15% and 20% tax brackets.

Property taxes

The upstream activities are exempt from paying property taxes as per the concession agreement. In general, Real estate tax is applied to all real estates all over the country (including new urban communities and free zones). The implementation of the real estate Law has started to take place on the first of July 2013.

- 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 is applicable for a five-year term and then reassessment procedures will be initiated from one year to three years before the end of each term. However, based on recent amendments, the application of the annual rental value assessed for the last five years (i.e. from 2013 to 2018) will be extended for three more years until 2021.

Reassessment procedures will be initiated from one year to three years before the end of each term. Rental value assessments set by the committees will be communicated to each taxpayer via a written notification "assessment notification" and will be published in the Official Gazette. The taxpayer can appeal on the rental value assessment within sixty days following the date of the publication date. The real estate tax is assessed in January of each year and is collected in two equal instalments at the end of June and December of the same year. Nevertheless, the taxpayer has the option to pay the whole tax amount on the date of the first instalment (i.e. at the end of June).

The tax due must be paid at the relevant real estate tax directorates in each governorate and their respective tax inspectorate affiliate offices.

Factors affecting the taxable amount:

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

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

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

A new article was recently introduced to real estate tax law, allowing by means of a decision from the Egyptian Cabinet, real estate tax exemption for the real estate actually exploited in the production and services activities stated by the Egyptian Cabinet; provided that the decision includes the below, for each production or service activity:

- The percentage of exemption; and
- Its duration.

Stamp taxes

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

Stamp taxes apply as follows:

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

There are two distinct types of tax:

- Nominal Stamp Tax, which is imposed on certain documents, regardless of their value at an approximate amount of EGP 1 on each page of copy of the contract (i.e. each of the counterparts to the contract should bear 1 EGP per page of each copy of the contract); and
- Proportional Stamp Tax, which is imposed at prescribed rates on the values of certain financial transactions.
- Stamp Tax on Banking Transactions:

  The stamp tax on Banks' loans is applicable on the Egyptian banks and the branches of foreign banks in Egypt with the exception to the non-resident Banks. The stamp tax is at the rate of 0.4% annually imposed on the highest debit balance and is applied on the beginning balance of each quarter during the year, in addition to the amount of utilization from the credit facilities balance granted by banks during each quarter. It is notable that such stamp tax is due within 7 days following the end of each quarter during the year and borne equally by both the bank and the customer.
- Stamp Tax on Sale / Purchase of Securities:

  The stamp tax is applied on the total proceeds realized from buying or selling any kind of securities regardless they are Egyptian or foreign, listed or non-listed and without deducting any costs (i.e. value of the transaction).

Non-resident investors should be paying stamp tax at the rate of 0.125% of the total proceeds realized from the sale of the Egyptian shares without deducting any costs. On the other hand, resident investors would be paying 0.05% on the total proceeds realized without deducting any costs as well. Such tax should be paid by each of the seller and buyer.

However, in case the sale of shares transaction involves the sale of at least of 33% of the company's shares or more, then the stamp tax rate imposed should be 0.3% applicable on each of the seller and the buyer. This rate should apply on the total amount of shares transferred by the same person in the same company within a period of two years from the date of the first transaction, and upon reaching the above mentioned threshold (i.e. 33%) within this period, as it would be viewed as an acquisition transaction undertaken as a single deal.

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

This type of stamp tax is non-deductible for corporate income tax purposes.

Other Types of Stamp Tax:

Payments made by governmental entities are subject to a 2.4% stamp tax (with certain exemptions), and it should be borne by the recipient, by means of withholding. There are other types of stamp taxes, which are imposed at nominal rates and others that are imposed at proportional rates, depending on the nature of the transaction that has been undertaken and /or the

being exercised.

Deemed Profit Tax

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

Incentives in the oil & gas industry

Upstream activities:

As for the upstream petroleum activities, the capitalized exploration expenditures are deductible for income tax purposes. Based on the provisions of the concession agreements and pending the approval of the EGPC, the capitalized exploration expenses are amortized over a period defined in the concession agreement.

In addition to that, the income tax losses may be carried forward for 5 years, for corporate income tax purposes. However, it is worth noting here that the income tax losses incurred on one project can only be offset against the gains realized by the same project. In other words, tax losses incurred on one project cannot be offset against the gains realized from another project, even if the two projects are owned by the same investor.

Tax Losses (All Activities):

Income tax losses may be carried forward for 5 years.

Compliance Requirements

Tax returns and payments

For the upstream activities, the foreign investor provides EGPC with a draft tax return for review and approval within 30 days before the due date for submitting the return to the tax authority (i.e. it must be submitted to EGPC).

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

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

Note that currently, the filing of the income tax returns should be made electronically on the ETA's website. Whereby, the taxpayers are required to register on the. ETA's website and should prepare and submit their annual income tax returns on the ETA's website.

Electronic- filing ("e-filing") of the corporate income tax returns:

The ETA has decided to apply the e-filing of income tax returns on a mandatory basis, starting from last financial year. Taxpayers are accordingly required to register on the ETA's website. Then, they shall prepare and submit their annual income tax returns on the ETA's website.

Upon submission of the tax returns, taxpayers are required to pay the tax due through one of the specific methods dictated by the ETA. This mainly involves that the payment will be made either through a bank transfer or using a smart card.

Penalty

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

For the midstream and the downstream activities, certain penalties should apply as well as a delay fine in case of failure to submit the tax return and pay the tax based on the Egyptian income tax law.

Tax Audit

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

Power and Utilities Sector

Brief overview of Power and Utilities development in Egypt

The Egyptian Ministry of Electricity and Energy has announced the feed-in tariffs ("FITs") for electricity generated by solar and wind sources as part of the government's efforts to increase the country's energy capacity in the face of serious power shortages and recent power outages.

Tariff rates for large-scale projects will be calculated in U.S. dollars because they will likely be developed with foreign financing. Moreover, the tariffs will be paid in domestic currency according to the exchange rate at the time of payment.

The Ministry of Electricity and Energy has set the ambitious goal of renewable energy supplying 20% of the national electricity by 2022. The government is also preparing a law that would allow for state-owned lands to be made available for renewable energy projects in exchange for 2% of the energy produced. The Egyptian government renewable energy deployment is viewed by the Egyptian government as an equitable and cost-effective mean of addressing a range of critical social and ecological issues while at the same time boosting job creation and the national economy.

In order to achieve the above-mentioned target, the Egyptian electricity transmission company ("EETC") is offering the private developers the opportunity to participate in an international competitive bidding to develop private wind and solar power projects on the basis of a build, own, operate ("BOO") scheme. The private renewable power projects will be developed in successive phases in areas around Egypt as Gulf of Suez area, East and West of the River Nile, Upper Egypt as Komombo, Menya and BenBan near Aswan etc.

In fact, Egypt is the only nation in the Middle East to date, that has allocated land specifically for development of renewables, with about 7,650 square kilometres which can host about 87 GW (54.3 GW PV and 32.7 GW) wind projects. This is an indication of strong government support that Egypt hopes will inspire market confidence for expanding its strong natural resource potential.

Fiscal Regime

It is noticeable that the taxation regime covering the power and utilities sector is similar to the standard regime. In other words, the net profits of the companies carrying on projects of such type are subject to the corporate income tax of 22.5%.

Tax Audit

Similarly, the tax audit for the power and utilities sector is not different to the other sectors. And it is to be applied as mentioned above in the tax audit section.

Legal Framework

The engineering, procurement and construction (EPC) contracts are the most common form of contracts used to undertake construction works by the private sector on large-scale and complex infrastructure projects. Under an EPC contract, a contractor is obliged to deliver a complete facility to a developer who only needs to turn a key to start operating the facility.

Hence, the EPC contracts are sometimes called turnkey construction contracts. In addition to delivering a complete facility, the contractor must deliver that facility for a guaranteed price by a guaranteed date and it must perform to the specified level. Failure to comply with any requirements will usually result in the contractor incurring monetary liabilities.

Also note there is no specific local content regulations for the power and utilities sector in Egypt.

Regulatory Framework

The key regulators in the power and utilities sector

The Ministry of Electricity and Energy (MOEE) is the key party who sets policies that identify electrical capacity needs in conjunction with the Electric Utility and Consumer Protection Regulatory Agency (“Egypt ERA”), which is the regulator responsible for the issuance of licenses, approvals and general regulation of electricity generation, transmission and distribution. Egypt ERA reports to, and follows the policy objectives of, MOEE pursuant to the Electricity Law.

The main publicly owned company operating in the electricity sector is the Egyptian Electricity Holding Company (EEHC). Egypt’s six generation companies and nine distributors are owned by the Egyptian Electricity Holding Company (EEHC). EEHC owns all government-owned power generation and distribution companies. Until recently, EEHC used to own the Egyptian Electricity Transmission Company (EETC), which has a monopoly over the construction, operation and maintenance of transmission facilities and the power grid. Under the new Electricity Law, EETC was separated from EEHC in order to separate electricity generation and distribution (handled by EEHC) from transmission, which is now exclusively handled by EETC.

Forms of contracts

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Local content regulations

There are no specific local content regulations for the power and utilities sector in Egypt.

Incentives in the industry

According to the Egyptian investment law no 72 of 2017, the projects which depend on or produce the new and renewable energy, as well as the electricity generation and distribution projects are guaranteed some investment incentives, if such projects are established under this law.

The purpose behind such incentives is aiming to attract foreign investors to the Egyptian market. It provided tax and customs exemptions for companies established under its umbrella and offered land, necessary for projects, at attractive prices and simplified incorporation procedures.

The investment incentives include both general and special incentives and explained as follows:

General incentives:

- The Articles of association of the above-mentioned companies established under this law are exempted

from the stamp tax and authentication and publishing fees for 5 years from the date of registration in the commercial register, moreover the land contracts of the project are exempted from the registration fees.

- The unified customs rate on imported tools, equipment, and machinery necessary for the establishment of the business, is 2%. This unified customs tax rate shall also apply to all the machinery, equipment, and devices imported by the companies and establishments operating in the public utility projects which are required for the set up or completion of such companies.
- There is a decrease in the VAT rate from 14% to 5% on imported tools, equipment, and machinery necessary for the establishment of the business and to be used in production (whether goods or services).

Special incentives:

The law guarantees a 30% discount off the investment costs, for the projects which depend on or produce the new and renewable energy, as well as the electricity generation and distribution noting that such discount will be for a period not exceeding 7 years from the date of initiating the activity. In addition, such discount value shall not exceed 80% of the paid-up capital of the project at the date of initiating the activity.

However, in order to enjoy the special incentives provided above, the Investment Projects are required to meet the following conditions:

1) A new company or establishment shall be incorporated to conduct the Investment Project.
2) The company or establishment shall be incorporated within 3 years maximum from the date that the Implementing Regulations of this Law enter into force.
3) The company or establishment shall keep regular accounting books. In the event the company or establishment operates in more than one zone, it may benefit from the percentage prescribed for each zone if it keeps separate accounting books for each zone.
4) None of the shareholders, partners, or owners of the establishment have presented, contributed, or used any of the material assets of a company or establishment that existed on the date the provisions of this Law entered into force in the setting up, incorporation, or conducting of the Investment Project which enjoys the incentive, or have liquidated this company or established within the term set forth in Paragraph (2) of this Article for the purpose of setting up a new Investment Project that enjoys the special incentives referred to. Violation of this term shall nullify the incentive mentioned and the company or establishment shall be liable to pay all the due taxes

Additional incentives may be granted by virtue of board of ministers resolution:

- Permit opening special customs windows for the importations and exportations of the project.
- The government bears all or part of the utilities cost for the project land, after operating the project.
- The government bears some of the employees' technical training costs.
- Returning half of the land price with regards to industrial projects that has started its activity within 2 years from the date of receiving the land.
- Providing free lands for some strategic projects.

The law has also provided several guarantees such as:

- All the resolutions related to the investment project must be justified and notified to the investors.
- The investment funds cannot be seized except by virtue of a final judgment/ruling.
- The permits issued for the project and lands granted cannot be abolished except after notifying the investor of the violation and granting him a grace period to rectify the causes of the breach.
- The investor has the right to establish, own, expand and dispose his investment project, fund project from abroad and transfer its profits.
- In case of liquidation, the competent authorities must notify the liquidator and GAFI of any due liabilities within no later than 120 days from the date the liquidator applies in this regard, otherwise the liquidated company shall be released.
- The companies can import its necessities from raw materials and equipment without a need to be registered in the importers register, moreover it can export its products without a need to be registered in the exporters register.
- The investment project can increase the foreign workforce permitted quota to 20% of the total work force in case there are no qualified nationals to fit in the position, moreover, some strategic projects may be exempted from such quota.

As a separate note and based on the latest amendments made to the customs law, a change has been made to the rules and the fees / customs to be paid when it comes to the temporary importation of machine or equipment related to renewable energy projects. Based on such amendment, the rate to be paid upon such importation is reduced to 10% of the value of customs duties that is paid in case of final importation (instead of 20%) and that should be paid for 10 years instead of 5 years. This has also been made to encourage such types of projects in Egypt.

Equatorial Guinea

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Oil and Gas Sector

Brief history on Oil & Gas development in Equatorial Guinea

Licensed blocks in Equatorial Guinea (EG) were first designated by the Spanish administration and offered for international tender in 1965 with awards going to groups operated by Mobil and Spanish Gulf Oil (Spangoc) but the exploration effort led to no commercial success. After independence in 1968, petroleum activity was much reduced and further significant exploration did not occur until after the 1979 change of Government.

Hispanoil and the new Government formed a joint venture company, GEPSA, which discovered the Alba gas condensate accumulation in 1983. GEPSA deemed Alba to be non-commercial and their licenses lapsed. During the 1980's, Total and Elf operated groups that explored onshore and offshore Rio Muni where extensive seismic surveys were undertaken, and four wells drilled without success.

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

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

In late 1999, Triton made a significant discovery with the first well on its licenses, Ceiba-1, which tested oil at 12,400 bpd and led to the first production in the Rio Muni basin in November 2000. As a result of the Ceiba discovery, an aggressive exploration program was undertaken by Triton during 2000 - 2001 that continued after the acquisition of Triton by Amerada Hess in 2001.

During 2000, Ocean Energy relinquished Block A and operatorship of Block D was taken over by CMS (now Marathon). In 2004, Marathon drilled the Corona-1 discovery well in Block D which extended the Alba Field into Block D. Triton Energy was awarded Rio Muni Blocks F & G in 1997, covering areas previously licensed to Elf and acquired seismic through 1997 and 1998.

This exploration campaign resulted in 18 successful wells which proved up several hundred million barrels of oil in northern Block G which were developed as the “Okume Complex”. The Okume Plan of Development was approved by the MMIE (Ministry of Mines and Hydrocarbons) in 2003 and the field came on-stream in 2006. Additionally, the G-13 discovery was made in southern Block G in late 2002 which was appraised in 2003 but remains undeveloped.

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

During 2002, new exploration licenses were awarded to the Fruitex Group covering Block M in the western offshore Rio Muni and to a Petronas operated group for Block N covering Corisco Bay. Fruitex acquired 2D and 3D in Block M and in late 2003 Petronas drilled the N-1 well (with non-commercial oil) and the N-2 well in 2005. In 2003, Devon Energy was awarded Block P in the Rio Muni Basin and in 2004 Noble Energy were awarded Block O and PetroSA Block Q, both in the Douala Basin, offshore Bioko Island. In 2004, Devon Energy drilled the unsuccessful P-1 well, but in October 2005, the P-2 well was announced as an oil discovery and was successfully appraised. In 2008, GEPetrol became operator of Block P when they purchased the Devon Equatorial Guinea assets.

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

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

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

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

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

a proposed 3-4 well drilling program which is planned to commence in 1H 2012.

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

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

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

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

In July – September 2012, Ophir Energy announced that the R-4 (Tonel-1), the R-5 (Fortuna East-1) and R-6 (Fortuna West-1) wells were all gas discoveries, bringing the estimated proved and probable reserves for Block R to 2.9 TCF. In June 2012, a new PSC was awarded to Marathon Oil and GEPetrol over Block A-12, offshore Bioko Island.

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

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

The fall in oil prices has immediate and lasting consequences for Equatorial Guinea's budget, especially as it is accompanied by a decline in production, which only reached an estimated 155 000 barrels of oil equivalent per day in 2015, and amounted to a fall of 5% in volume per year over the last 10 years. This also affects the structure of the balance of payments, due to lower export earnings. The fall in government revenues has a direct impact on the rest of the economy, given the importance of public procurement in stimulating non-petroleum sectors. It should be noted that the capital expenditure reflected in the Finance Act 2015 (XAF 1 951 billion) corresponds to 85% of the forecast revenue. The 2016 Finance Act, against a background of recession, indicates that the authorities have chosen to maintain a high level of investment while maintaining a strategic balance.

Significant new developments

August 2020: Announcement of the acquisition of Noble Energy by Chevron giving the American major an entry into Equatorial Guinea's oil & gas sector, where Noble Energy has interests in the Alba Field (33% non-operated WI and 32% revenue interest), Block O (Alen

Field 51% operated WI and 45% revenue interest) and Block I (Aseng Field, 40% operated WI and 38% revenue interest).. In addition, Noble Energy was also the operator Block YoYo in Cameroon and of the deepwater Block Doujou Dak (60% WI) in Gabon, where it was in the process of evaluating recently acquired 3D seismic data.

2020 - Saipem: Italy's Saipem company was awarded a contract in Equatorial Guinea to build a 43 mile (70 km) subsea pipeline linking the Alen platform with the Punta Europa petrochemical hub. Gas deliveries from the project, operated by Noble Energy, are expected to begin in early 2021. The pipeline will serve offshore gas fields and have a capacity for 950 MMcf/d of gas as Equatorial Guinea looks to extend the life of its LNG production assets.

2019 - Ophir Fortuna Project: Ophir Fortuna project entered FEED in July 2015. Ophir has worked to find financing and make a final investment decision on the Fortuna FLNG project for a while but has suffered a number of setbacks in the process. Unfortunately, Ophir was unable to find financing by December 2018 in order to make the final investment decision for the long-stalled Fortuna FLNG project. Consequently, The EG Ministry of Mines and Hydrocarbons (MMH) declined the company's request to extend Block R license that expired on December 31, 2018

2016: The Ministry of Mines, Industry & Energy has been divided in two Ministries: The Ministry of Mines & Hydrocarbons, and the Ministry of Industry and Energy.

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

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

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

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

Economic Updates

The government's development agenda is guided by a medium-term strategy paper, the National Economic Development Plan: Horizon 2020, which targets economic diversification and poverty reduction. The first phase of Horizon 2020 focused on infrastructure development was concluded in 2012. The second phase will focus on economic diversification, targeting strategic new sectors such as fisheries, agriculture, tourism and finance.

As the country moves into the second phase of the National Development Plan, the government is planning to redirect public investment from infrastructure towards the development of new economic sectors. Equatorial Guinea is largely dependent on oil. The significant economic impact of the recent drop in international oil prices has underscored the importance of promoting non-oil growth and increasing efficiency of spending.

Equatorial Guinea is among the countries worst hit by the Central African Economic Monetary Community (CEMAC) crisis which started in 2014, facing twin deficits and a rapid loss of international reserves stemming from dependence on oil exports, lack of sufficient buffers, and weak public financial management (PFM) procedures.

To restore its external and fiscal imbalances, Equatorial Guinea is undertaking several reforms and has entered an IMF Staff Monitored Program (SMP) in May 2018. The reforms include raising non-hydrocarbon tax revenues and reducing the non-hydrocarbon primary deficit, improving PFM in coordination with the other CEMAC countries, supporting social sectors, protecting the banking sector through the non-accumulation of new arrears, and improving governance.

EQG became member of Organization of the Petroleum Exporting Countries (OPEC) in May 2017. For the government, joining OPEC could be an attempt to bolster foreign investment and technology transfers from other member countries, especially from the Gulf.

Fiscal regime

The taxation of petroleum exploration and production is covered by the general tax provisions in Decree Law nº.

4/2004. Additionally, Equatorial Guinea is a member of the Central African Economic and Monetary Community (CEMAC) (formerly UDEAC) and a signatory to certain regional agreements concerning tax and trade. There have been some amendments with Financial Laws of these past years but no major new laws or regulations (since the tax law of 2004). However, there is stronger enforcement of the regulations related to National Content and stronger positions adopted in the frame of Tax Audits regarding the scope of application of the WHT.

Regulatory Framework

The key regulators in the oil & gas industry:

All aspects of oil & gas exploration in Equatorial Guinea are regulated by the: Decree Law No. 8/2006 of November 2006 (Hydrocarbons Law) and the New Petroleum Regulation of the Republic of Equatorial No. 2/2020, dated June 15, 2020 published in June 2020 and revoking the previous one (MP 4/2013 dated June 2013).

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

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

Forms of Contracts

Official templates of contracts are provided on the official website of the former Ministry of Mines Industry and Hydrocarbons (now “MMH”).

The Model Petroleum Sharing Contract included the following provisions:

- Initial exploration period: normally for four to five years divided into two sub periods which is extendible twice on a yearly basis.
- Relinquishment: 40% is relinquished after the initial exploration period, with a further 25% of the remaining area at the end of each renewal period. Voluntary relinquishment at the end of each contract year is permitted.
- Exploration commitment: This is negotiable, but usually involves purchase and interpretation of all existing data relating to the contract area and seismic acquisition and/or exploration drilling in the initial exploration period and a well in each of the annual extensions.
- Royalty: Minimum rate of 13%, which will escalate according to average daily production.
- Cost recovery: Costs may be recovered from a negotiated share of production net of royalty with unrecovered costs carried forward.
- Production sharing: This is from profit oil according to a stepped scale related to cumulative production.
- Bonus payments: on contract signature, bonus payment is on notification of a commercial discovery and on production targets.
- State participation: This is a minimum of 20% carried working interest during exploration phase.
- Income tax: This currently at the rate of 35%.

Local Content Regulation

There are specific local content regulations in Equatorial Guinea and is applied to O&G, E&P and OFS. These rules concern the training of personnel and promotion of the local workforce. Expatriate quota is 10% up to 30% for the oil & gas industry (subject to Government approval).

Ministerial Order No. 1/2020, dated April 13th, limits to 3 years the employment period for Expatriates in the Hydrocarbon Sector in the Republic of Equatorial Guinea.

Taxation regime

Direct Tax

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

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

Corporate Income Tax ("CIT")

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

- Payment of the Minimum Income Tax ("MIT") corresponding to the 1,5% of the previous year turnover.
- Payment of the remaining quota of CIT at a 35% rate in case of profits when filing the CIT return.

The penalty for late filing is XAF 200,000 per month.

The following will be treated as deductible expenses:

- Overhead of any type;
- Staff expenses and labor;
- Expenses related to the premises, material and furniture;
- Miscellaneous and especial expenses;
- Insurance premiums,
- Gifts, donations and subsidies.

Generally, the following conditions must be met before a deductible expense is claimed:

- The expense must be done in the company's interest;
- The expense must represent a diminution of the net assets;
- The expense must be related to the fiscal year during which it was done;
- The expense must be justified.

The Tax Code also provides special deductibility conditions for some expenses.

Minimum Income Tax (MIT)

- The amount cannot be lower than XAF 800,000 (even if company does not have revenues).
- MIT is to be deducted from the CIT to be paid.
- Penalty for lack of payment is equal to 50% of the amount that should have been paid.

Capital Gains Tax

Capital gains realised by resident companies are subject to a 10% WHT while the one realized by non-resident companies are subject to standard regime (i.e. 25% WHT rate).

Dividends paid to private persons are subject to the PIT progressive scale.

Withholding tax

This withholding tax is applicable to:

Gross incomes related to the sale of goods and services;

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

This withholding tax equals to:

- 6.25% on the payments done to a resident entity;
- Reduction of withholding tax rate from 20% to 15% for non-resident legal entities and natural persons (financial La 2021). The rates of 15% remains the same for legal entities.

The amount withheld by the withholding agent during a fiscal year is no longer deductible from the Corporate Income Tax to be paid for the following fiscal year but must be treated as a deductible expense. (Art 461.3 of the EG Tax Code providing the right to offset WHT credit against CIT liability has been deleted by Financial Law 2020).

Thin capitalisation and Transfer Pricing (TP)

TP rules are not developed in Equatorial Guinea. The law only provides general guidelines under which incomes and profits transferred directly or indirectly whether through surcharge or a decrease in the purchase or sale prices, or through other means by companies that are under the dependence and control of companies located outside of Equatorial Guinea. The guidelines provide that such income or profit will be re-incorporated into the P&L of the company in Equatorial Guinea. Reintegration is to be performed by comparison with similar companies and their normal operations in Equatorial Guinea. There are no additional details, but we understand that this will be subject to discussion during tax audits. However, we are not aware of any audits reassessing transfer pricing aspects as of date.

No thin cap rules applicable in Equatorial Guinea.

Double Tax Treaties (DTT)

There are no DTTs

Indirect Tax

Value Added Tax (VAT)

VAT is not applicable to the majors operating within the O&G sector when provided by the PSC.

in the past, VAT and WHT were considered as 2 alternative taxes. The Tax Administration was tolerant, and VAT was considered as not applicable in the oil & gas sector in EG.

However, during the last tax audits, the administration seems to consider that the legal VAT exemption should be limited to activities directly linked with oil operations.

Entities operating within the oil & gas sector, are not required to invoice with VAT because VAT is not applicable within the oil & gas sector. However, outside the oil & gas sector, O&G companies may be required by non-oil & gas vendors to pay VAT if they do not justify an exoneration from this tax granted by the Tax Administration. (said VAT is generally allowed as a deductible expense).

Sales Tax

No sales tax applicable in EG.

Customs and Excise Duties

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

Revision of special taxes

- Tax on consumption of alcoholic and non-alcoholic beverages;
- Tax on consumption of cigarette;
- Tax on automobiles, boats and motor vehicles.

Creation of new taxes

- Tax on the use of plastic bags: 25 XAF per unit
- Tax on telecom services: 10% (excluding Value-Added Tax)
- Tourist Tax
- Registration fee of 0.5% for all public maintenance contracts.
- New taxes for services rendered by the Ministry of Labour

Other Taxes

Personal Income Tax (PIT)

The incomes concerned are:

- Those received and related to a work contract;
- Those received for an activity performed in Equatorial Guinea.
- The salaries of all employees working in Equatorial Guinea are subject to the Personal Income Tax (PIT).
- Taxable base of the PIT on Salaries and Wages

  According to the Tax Code, the taxable income is composed of:
  - Basic salary;
  - Bonuses indemnities and allowances;
  - Expenses refunding;
  - Benefits in kind.
- Calculation, declaration and payment of the PIT on Salaries and Wages
- The calculation is done in various stages. The following amounts must be deducted from the taxable salary:
- Professional expenses: based on effective amounts, or according to the legal limit of 20% of the taxable salary (up to XAF 1,000,000 /year);
- The employee's part for the social contributions to the National Institute of Social Security (INSESO) and to the Work Protection Fund;
- Work Protection Fund and Training Tax (WPF);

After this, the PIT rate is applied to the taxable salary according to an annual progressive tax scale that ranges from 0 - 35%. PIT is withheld monthly by the employer and then paid to the Public Treasury within the first fifteen days of the month following the payment of the salaries. In practice, the employer must declare the PIT on Salaries and Wages within the first fifteen days of the month following the month of payment of the salaries and then must pay said tax within the fifteen days following the date when the tax liquidation is remitted to the taxpayer. Penalties for the lack of payment or late payment of the PIT are equal to 25% of the amount due plus 10% per month late.

Social contributions

- Social security contributions (INSESO)

  In practice, the contributions to INSESO include:

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

  The employer withholds the employee's part and declares it with his own INSESO part within the first fifteen days of the month following the month of payment of the salary. The penalties for the lack of payment or late payment to INSESO are equal to 20% of the amount due.

- Work Protection Fund ("WPF")

  Both employers and employees must pay their contributions to the WPF. This contribution includes:

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

  This contribution is withheld monthly by the employer who declares it to the Ministry of Labour and Social Security within the first fifteen days of the month following the month of payment of the salary. The penalties for the lack of payment or late payment of the WPF are equal to 20% of the amount due.

Taxation of Oil Field Services (OFS) companies

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

Property Tax

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

Deemed Profit Taxation

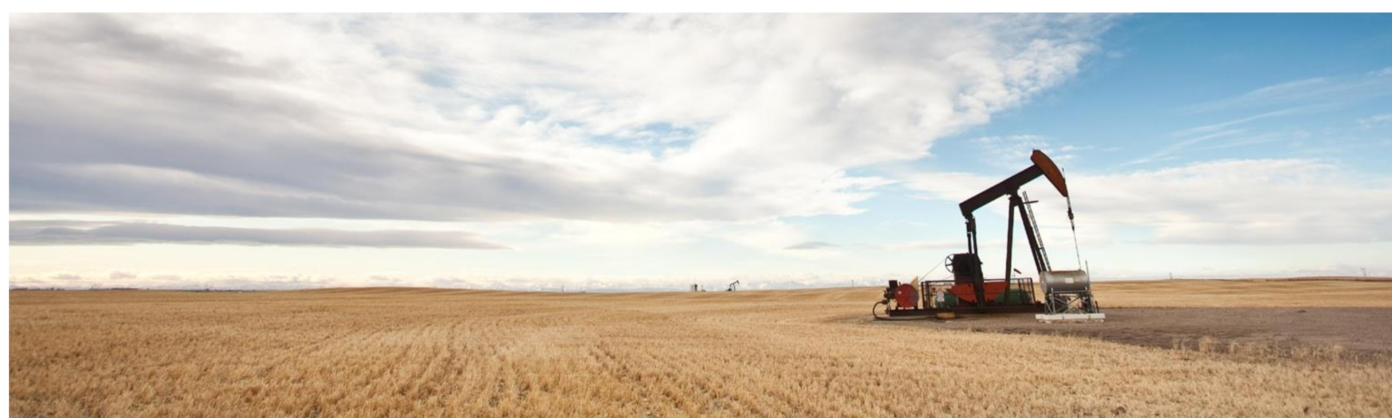
The rate of the Company Income Tax is 35% (Unless stipulated otherwise by a PSC).

Compliance requirements

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

Tax audits

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



Power and Utilities Sector

Brief overview of the Power and Utilities sector in Equatorial Guinea

The entire power sector of Equatorial Guinea is owned and operated by State-owned company named Sociedad de Electricidad de Guinea Ecuatorial SA (SEGESA), although the Government has suggested that privatization is possible in the future.

Prior to the oil boom, miniscule generating capacity of 5 MW was provided by the 1 MW Riaba hydro scheme on Bioko and a 4 MW oil-fired plant in Rio Muni.

A 10.4 MW gas-fired plant was completed at Punta Europa in 1999 next to the AMPCO plant. It is supplied with about 14m cubic feet of gas a day from the Zafiro Field and was expanded in phases to give current generating capacity of 148 MW.

The 120 MW Djibloho hydro plant has also recently been completed with $257m in funding from the Chinese government. The loan covered the entire cost of the turnkey contract awarded to Sino Hydro for dam construction and other construction and engineering work on the scheme.

In addition, 1,366km of transmission lines and several substations have been constructed to improve power supplies to urban centres in Rio Muni, taking total project costs up to $647m. The venture’s generating capacity could be increased at a later date, while the 200MW Sendje hydro scheme was completed in 2015, thereby creating scope for exports to Cameroon and Gabon.

The electrification program has supplied power to many urban inhabitants but more investment in distribution is required in rural areas. Bioko and Rio Muni have separate power grids with no prospect of connecting them because of the distance involved.

Oil & gas producers have their own independent power plants to supply their own needs. The country has about 2.6 GW of untapped, economically feasible hydro potential that could be developed to supply neighbouring states, if enough regional transmission capacity can be developed and long-term power purchase agreements concluded between the various state-owned power companies involved.

Economic updates

Oil has been the major source of high economic growth. Overall, the economic development has been uneven. The government is trying to improve the investment and business climate.

Fiscal and taxation regime

There is no specific fiscal and taxation regime for the power and utilities sector in Equatorial Guinea.

Regulatory framework

There are no specific regulations in this sector.

Forms of contracts

There is nothing in place as the industry is owned by the State.

Local Content regulations

There are no specific regulations in place as the industry is owned by the State

Gabon

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Oil and Gas Sector

Brief overview of the Oil & Gas industry in Gabon

Gabon is a Central African country situated along the Atlantic Coast. The country has been hit by the oil crisis since 2014. The Hydrocarbon Code of 2014 faced criticism because players in the oil sector say it is a disincentive for investments in the oil sector. This situation had led the Gabonese Authorities to adopt a new Hydrocarbons Code (Law n°002/2019 dated 16 July 2019) regulating the hydrocarbons sector in the Gabonese Republic.

Political Updates

The following political appointments happened during the period under review:

- A new Minister of Oil, Gas and Mines was appointed on December 2, 2019;
- A new head of Hydrocarbons directorate was appointed on November 7, 2019;
- A new Manager of the National Oil Company (Gabon Oil Company) was appointed on 11 December 2019.
- A new Secretary General of the Ministry of Oil, Gas and Mines was appointed on July 22, 2020

Economic Updates

Three (3) Petroleum Sharing Contracts (PSC) were signed on 14 February 2020 between the Gabonese government and Perenco Oil & Gas Gabon.

The Gabonese economic sector is affected by the health crisis related to the Covid-19 pandemic.

Fiscal and Taxation Regime

The common fiscal law is provided by the Gabonese General Tax Code. However, the Hydrocarbons Code provides for specific regimes regarding some taxes, duties and contributions to be paid by oil companies in the upstream sector. Besides, the oil contracts may also provide for a particular tax regime.

Regulatory Framework

The main regulators of the oil & gas sector are the ministry in charge of hydrocarbons and the head of the hydrocarbon Directorate. In addition, there are advisory bodies which are the joint Technical Commission for Petroleum Prices (TCPP), the National Petroleum Product Price Commission (NCPP) and the Petroleum Revenue Monitoring Commission (PRMC).

Petroleum Contracts in the Oil & gas Industry

The Gabonese Hydrocarbons Code provides for different types of petroleum contracts which are:

Technical evaluation contract

This contract is concluded between the State and a contractor with a view to carrying out, at its expense and exclusive risks, on behalf of the State, all preliminary recognition prospecting, work notably in using geological and geophysical methods.

Service contract

The service contract concluded between the state and a service provider by which the latter undertakes to carry out, on the name and on behalf of the State, upstream activities and receives, as compensation, a fixed or determinable amount, payable in cash or in kind.

Exploration and production sharing contract

This contract is concluded between the State and a contractor through which the latter undertakes to carry out into a delimited area, at its expense and risk, on behalf of the State, the activities of research for the purpose of discovering hydrocarbons, development and production entitling of the contractor, in return for the service rendered and the financial and technical risks assumed, at a remuneration represented by the allocation of part of Hydrocarbons produced.

Operation and production sharing contract

This contract is usually concluded between the State and a contractor by which the latter undertakes to carry out, at its own expense and risk on behalf of the State, development and production activities entitling the contractor, in return for the service rendered and to the financial and technical risks assumed, to remuneration represented by the allocation of part of the hydrocarbons produced.

Exploitation agreement

This is usually between the State and a contractor, intended exclusively for the exploitation of marginal discoveries, mature fields and marginal fields.

Local Content Regulations in the industry

Provisions relating to local content are provided into the Law No. 002/2019 regulating the hydrocarbon sector in the Gabonese Republic. Based on its provisions, legal or physical persons carrying out a hydrocarbon activity into the Gabonese territory are required to adhere to and implement all the rules related to local content, notably:

- Raising the level of the expertise of Gabonese staff;
- Incitement to the consumption and use of local goods and services;
- Training of Gabonese nationals to hydrocarbon industry jobs;
- Promotion of community projects;
- Transfer of technology and skills to Gabonese nationals and indigenous businesses.

According to article 11 of the Decree No. 162 / PR / MTE dated 7 March 2016 on the patterns of foreign workers in the Gabonese Republic, the number of foreign workers subject to an employment permit must not exceed 10% of the company's total workforce. There are, however, derogations which may be granted by the Minister of Labor, in the context of a contribution of foreign personnel for a specific work and of a limited period.

Incentives in the industry

The Hydrocarbons Code provides the following incentives:

- The transfers made between Gabonese subsidiaries of one contractor or between entities members of one contractor are exempted from registration duties

and all taxes (Article 200 par. 1 of Hydrocarbons Code);

- Transfers made by parent companies to their Gabonese subsidiaries are exempted from registration duties and all other taxes (Article 200 par. 2 of Hydrocarbons Code);
- Transfer of interests and share capital made by a contractor for the benefit of third parties, during the first exploration phase, are exempted from the duties and taxes provided by legislation in force (Article 201 par. 2 of Hydrocarbons Code);
- Hydrocarbon activities carried out by contractors are subject to VAT at 0% rate (Article 202 par. 1 of Hydrocarbons Code);
- Goods and services of all kinds acquired from foreign suppliers and intended for the activities of Hydrocarbons, are imported free of VAT (Article 202 par. 2 of Hydrocarbons Code); and
- Contractors and their parent companies are exempted from tax on income from movable capital assets (Article 203 of Hydrocarbons Code).

Power and Utilities Sector

Brief overview of Power and Utilities sector in Gabon

- Gabon benefits from a very good rate of access to power (85%) in the sub-region, even if there are very large disparities between urban areas (81.5%) and rural areas (35%).
- The Gabon Energy and Water Company (SEEG) which is a public company, oversees the distribution of electricity and water in the country. It produces power but also purchases energy from other companies.

Regulatory Framework

As mentioned above, there is a single company (SEEG) which distributes power and water to companies in the country, individuals and administration. However, there are also companies which sell power to SEEG.

The public electric energy service is under the authority of the following institutions : the Ministry of Energy and Hydraulic Resources, the Regulatory Agency of Water and Electric Power (CNEE) which ensures, in the name and on behalf of the State, the execution of the public service linked to the management of the networks water and public lighting, and the National Council for Water and Electricity (L'Agence de Régulation du Secteur de l'Eau potable et de l'Energie électrique, ARSEE) which ensure the regulation of the water and power sector in the Gabonese Republic.

Tax Regime

The provisions of the Gabonese General Tax Code apply to the Power and Utilities sector.

Ghana

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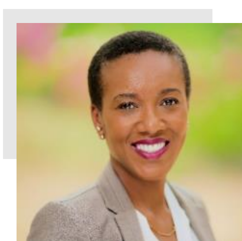

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Oil and Gas Sector

Brief overview of the Oil & Gas industry development in Ghana

Ghana's Oil and Gas industry had a positive outlook despite the effects of the novel corona virus disease. This in part was largely due to the measures taken by the government to allow the import of critical oil and gas workers into the country during the height of the crisis. The first licensing round which occurred in 2019 was a success and necessitated a second licensing round in 2020. The second round however failed to take place as scheduled due to the impact of the COVID-19 disease. There are currently three producing oil fields being the Jubilee, Tweneboa, Enyenra, Ntomme (TEN) and Sankofa Gye Nyame (SGN).

In the last quarter of 2020, the Government of Ghana, through the Ministry of Energy, declared the unitisation of the SGN and Afina fields, with Afina holding 54.55% of the combined field and Sankofa having the remaining 45.45%.

The Sankofa Field is operated by ENI who operates in the Offshore Cape Three Points Area while the Afina Field is within West Cape Three Points Block 2 which is operated by Springfield.

Should this directive be effected, it is expected to increase oil production whiles ensuring optimum exploitation and recovery of Ghana's petroleum resources should evidence show the discovered resource straddles the two fields.

Political Updates

The country held its general elections on 7 December 2020 and re-elected the incumbent President to continue his mandate for another term. Although the results of the election are being challenged in the Supreme Court, the political atmosphere remains calm and is unlikely to disrupt business. Although a new Minister of Energy is expected to be appointed in 2021, there is no expectation of major policy changes in the sector.

Economic updates

In 2020, Ghanaian economy felt the impact of the novel coronavirus disease (COVID-19). In March 2020, the Bank of Ghana Monetary Policy Committee reduced the monetary policy rate from 16% to 14.5%. This rate remained in force for the rest of the year while the inflation rate as at December 2020 stood at 10.4% as against an original target for the year of 8%. In view of the effects of the COVID-19 pandemic, the Minister of Finance, in a mid-year Budget Statement reading in Parliament, revised the outlook of real GDP growth rate from an initial forecast of 6.8 to 0.9% for 2020.

In October 2020, Parliament passed into law the Petroleum Hub Corporation Bill which seeks to establish a Petroleum Hub Development Corporation to promote and develop a Petroleum Hub within the country. It is anticipated that the Petroleum Hub will be set up as a Free Zone area and will be situated within the Western Region of Ghana. Initial estimated cost for the infrastructural development to be undertaken at the Petroleum Hub is in the region of US$ 60 million.

Custom Duties

- **Ghana National Petroleum Corporation**: established by the Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L 64) as the National Oil Company of the upstream oil & gas industry in Ghana. The law also sets out the functions, administration and corporate governance aspects of the GNPC.
- **Energy Commission**: The Energy Commission Act, 1997 (Act 541) established the Energy Commission (EC) with functions relating to the regulation, management, development and utilisation of energy resources in Ghana. The EC regulates Ghana’s electricity, natural gas and renewable energy industries, and advises the Government of Ghana on energy matters. It grants licenses to companies that also trade in LNG.
- **Ministry of Energy**: the ministry is responsible for the formulation, implementation, monitoring and evaluation of energy sector policies.
- **National Petroleum Authority:** The National Petroleum Authority (NPA) regulates, oversees and monitors the petroleum downstream industry including Oil Marketing Companies (OMCs) to ensure efficiency, growth and stakeholder satisfaction. The NPA also monitors and regulates petroleum prices by ensuring that prices are determined in accordance with the prescribed pricing formula. It grants licences to service providers and oil marketing companies as well as protecting consumer interests and maintaining the highest standards of petroleum products offered to them.
- **Petroleum Commission (PC):** the PC is mandated to promote, regulate and manage the efficient conduct of upstream oil & gas operations and all the allied activities. It also ensures the efficient utilisation of petroleum resources on a sustainable basis. Implementation of local content regulations falls under the PC. All upstream petroleum companies who intend to operate in Ghana are required to register with the PC and be issued with a permit before commencement of operations.

Fiscal/Taxation regime

The following tax legislations are applicable:

- **Petroleum Income Tax Law 1987 (P.N.D.C.L. 188) (PITL):** which provides for the taxation of income of Contractors (with Petroleum Agreements signed before 2015) carrying out upstream petroleum operations;
- **Income Tax Act 2015 (Act 896) (ITA) as amended:** The ITA provides for the taxation of income of Contractors and Subcontractors (with Petroleum Agreements signed in 2015 and thereafter).
- ITA also provides for transactions outside the scope of the Petroleum Agreements in instances where there is a fiscal stability clause in their PAs;
- **The Petroleum Revenue Management Act, 2011 (Act 815) as amended:** which was amended in 2015 is expected to help Ghana to efficiently manage revenue from crude oil and empower government to set aside and to invest proceeds from crude oil;
- **Revenue Administration Act, 2016 (Act 915):** which provides for the administration and collection of revenue by the Ghana Revenue Authority and for related matters;
- **Petroleum Agreements:** these are agreements entered 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; and
- **Double Taxation Agreements (DTA)** in Force with the Republic of Ghana.

Taxation regime

Petroleum/Oil taxation: The ITA provides for petroleum income tax rate of 35%.

Royalties: A Contractor is subject to royalty at rates ranging from 4% to 12% of the gross production of crude oil. The applicable rate is based on the provisions of the PA of the Contractor.

Local Content Fund: The contractors' contribution is stipulated in the PA whilst the sub-contractor is expected to pay 1% of the total revenue from the contractor or licensee for every contract.

Gas taxation: There is no separate regime for gas taxation in Ghana and hence ITA or PITL (in conjunction with PA) will apply.

Liquefied natural gas (LNG) regime: There is no specified separate regime for liquefied natural gas taxation in Ghana and hence ITA or PITL (in conjunction with PA) will apply.

Withholding taxes

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

VAT /National Health Insurance Levy (NHIL)/ Ghana Trust Fund Levy:
Flat rate of 3% on the value of taxable supply of goods supplied by wholesalers and retailers. NHIL at 2.5%, GETFL at 2.5% and VAT at 12.5% on standard rated supply of goods and services. The effective VAT on the standard rated supply of goods and services is however 18.125%. Application of VAT (and related taxes) is dependent on each oil block as per the terms of the PA.

Forms of contracts

In Ghana, petroleum contracts are based on a model Petroleum Agreement which is modified to reflect the terms agreed between the Government of Ghana (the State), the GNPC and the Contractor.

Once signed, the Petroleum Agreement must be ratified by the Parliament of Ghana and will usually specify the area that has been applied for and awarded, the exploration period, the related work program and cost, tax regime and sanctions in case of default amongst other regulations.

Local content regulations

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

The aim of this law is to promote maximisation of value-addition and job creation using local expertise, goods and services business, financing in the petroleum industry value chain and their retention in Ghana. The Local Content Committee established by the Board of the Petroleum Commission is required to oversee the implementation of L.I. 2204.This local content regulation currently applies only to upstream petroleum operations.

Incentives in the oil & gas industry

There are no specific tax incentives applicable. However, depending on the relevant PA, some incentive deviations from the general tax law may apply. Beyond specific taxes provided for under the PA, Contractors and Subcontractors may be exempted from certain taxes including social security contributions, Value Added Tax, and minor levies.

Power and Utilities Sector

Brief overview of Power and Utilities development in Ghana

Power supply in Ghana is mainly from hydroelectricity, thermal fueled by crude oil, natural gas and diesel, solar. Ghana also currently exports power to Togo, Benin and Burkina Faso.

The power sector in Ghana is mainly dominated by government agencies (as regulators) and Independent Power Producers (IPP) which are involved in power generation, transmission and distribution.

The Volta River Authority although a state entity is also engaged in generation of electricity and controls distribution in the northern sector of the country through the Northern Electricity Development Company. The distribution of power to the southern sector is currently controlled by the Electricity Company of Ghana (ECG).

In 2020, the President announced electricity tariff reductions for majority of consumers whiles making it free for lifeline consumers as part of measures to lessen the economic impact of the COVID-19 disease on the population.

The Ghana Grid Company (GRIDCO) manages the national transmission network and serves as an intermediary between the IPP and distributor.

In addition, there are a few bulk power distributors who supply power mainly to manufacturing and other industrial hubs.

Legal Framework

A license must first be obtained by any person who intends to engage in a business or a commercial activity for the transmission, wholesale supply, distribution or sale of electricity or natural gas. Similarly, a licence is required in order to engage in commercial activity in the renewable energy industry.

The following legislations apply:

Energy Commission Act, 1997 (Act 541) which provides for the regulation, management, development and utilisation of energy resources in Ghana; provides for the granting of licences for the transmission, wholesale supply, distribution and sale of electricity and natural gas and related matters.

The Public Utilities and Regulatory Commission Act 1997 (Act 538) (the PURC Act) (as amended) which establishes the Public Utilities Regulatory Commission (the PURC). Included in the mandate of the Commission is the regulation of electricity tariff charges and charges on transportation of natural gas.

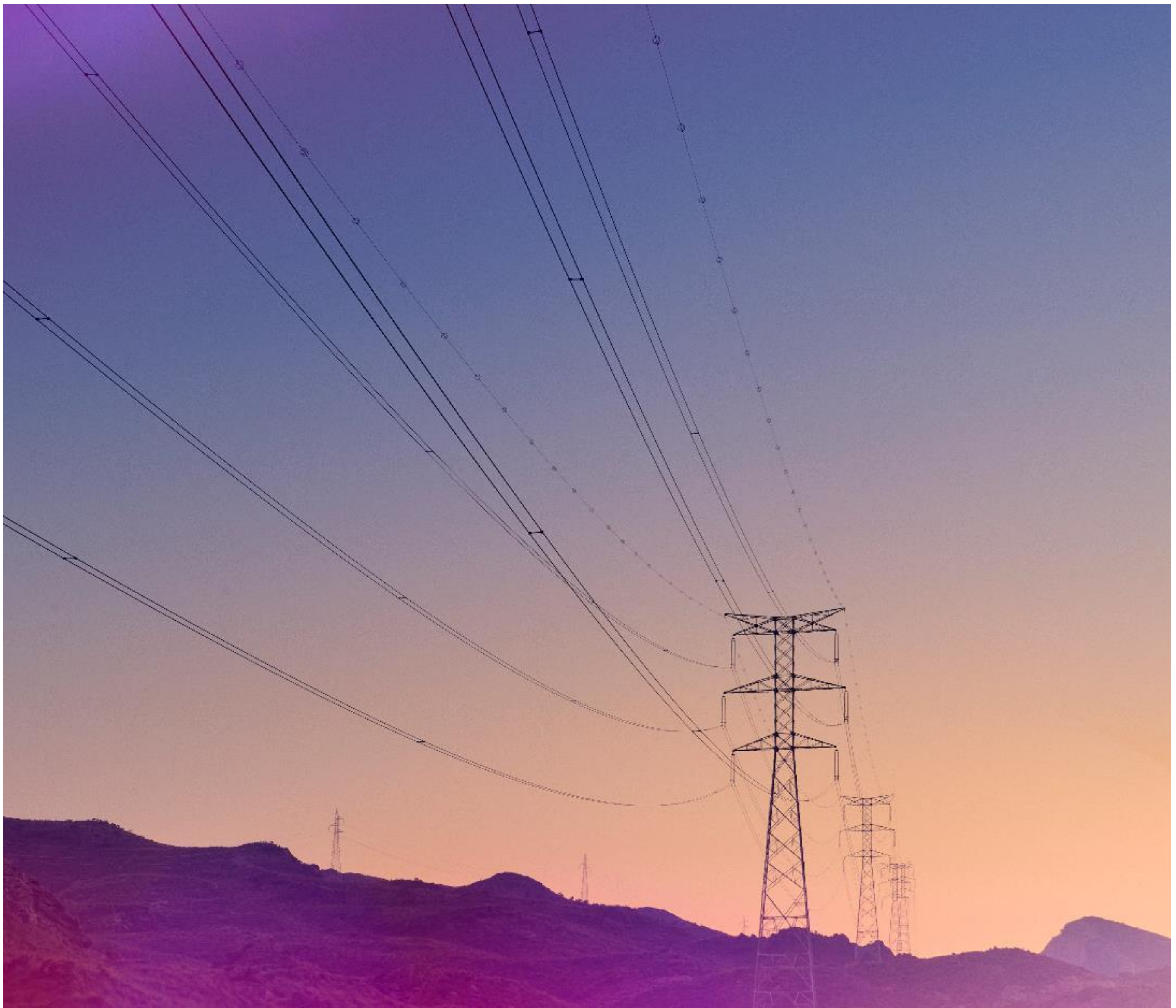
The Volta River Development Act 1961 (Act 46) which establishes the Volta River Authority (VRA).

Bui Power Authority Act 2007 (Act 740) which establishes the Bui Power Authority with the mandate to see to the development of hydroelectric power project on the Black Volta River at Bui, any other potential hydroelectric power sites on the Black Volta River and related matters.

Renewable Energy Act 2011 (Act 832) provides for the development, management, utilisation, sustainability and adequate supply of renewable energy for generation of heat and power and for related matters. Energy Commission (Local Content and Local Participation) (Electricity Supply Industry) Regulations, 2017 (L.I. 2354) which aims at ensuring maximum participation of local businesses in all facets of the power industry.

Tax regime

The general tax regime applies to participants in the energy sector excluding IPP's operating under a specific tax concession agreed upon with the Government of Ghana and ratified by Parliament of Ghana.



Kenya

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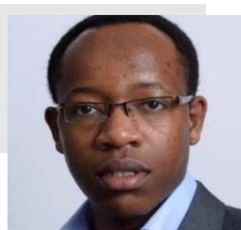

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Oil and Gas Sector

Brief overview of the Oil & Gas industry in Kenya

The petroleum sector in Kenya is organised into three sectors. These are the upstream, midstream and downstream sectors. The upstream sector involves exploration, development and production of crude oil and natural gas. In the mid-stream sector, the main activities include storage, refining and transformation of crude oil into consumable petroleum products. While in the downstream sector, the major activities include supply and distribution of refined petroleum products.

Upstream Petroleum

Kenya has four (4) petroleum exploration basin and these are Lamu Basin, Anza Basin, Mandera Basin and Tertiary Rift Basin. Oil & gas exploration in the country began in 1956 and the breakthrough came in March 2012 with the discovery of Ngamia 1 Well, in Lokichar Basin in Turkana County. To date, over 86 wells have been drilled with a majority within the Tertiary Rift. An estimate of over 4 billion barrels of crude oil reserves have been encountered in the Lokichar sub-basin by Tullow Plc and its partners, with recovery oil estimated to be 750 million barrels.

Midstream Petroleum

Petroleum is one of the prime movers of the country's social and economic development. Petroleum products are predominantly used in transport, commercial and industrial sectors. Kenya imports all its petroleum products requirements. The Ministry coordinates this activity with oil marketing companies through a process known as the Open Tender System. The Kenya Pipeline Company provides product movement infrastructure including storage and oil pipeline services.

Downstream Petroleum

Distribution and Marketing of petroleum products is done by oil marketing companies. The National Oil Corporation of Kenya (NOCK) is the state body that is engaged in this area. It is also involved in the upstream activities.

Significant developments – Oil Project Faces Further Delays

In late 2020, Tullow Oil announced it will be reassessing its South Lokichar Development project with its JV partners, in view of the lower oil price environment. The JV consists of Tullow Oil (50%), Total (25%) and Africa Oil (25%). Final Investment Decision ("FID") for the project was initially targeted for 2019 but has faced substantial hurdles since, including issues securing land rights, difficulties finding a viable export route and most recently, the impact of Covid-19 restrictions on the project work programme.

A revised Field Development Plan is expected to be submitted to the Kenyan Government by the end of 2021. The government has extended the exploration periods for various blocks (10BB and 13T) until December 31 2021, which gives the JV partners time to evaluate options for the redesign. Other necessary requirements include an environmental and social impact assessment as well as land and water agreements. According to Kenya's Energy Minister, Tullow Oil expects to make FID in 2022.

Political Updates

As a Republic, the sovereign power belongs to the people of Kenya and is exercised in accordance with the Constitution (2010). Sovereign power is delegated to the following State organs namely:

I. Parliament and the legislative assemblies in the county governments;

II. the national executive and the executive structures in the county governments; and

III. the Judiciary and independent tribunals.

Sovereign power of the people is exercised at the national level and county level.

The President is head of State and Government. Kenya has a five (5) year election cycle with the next elections scheduled in 2022.

Regulatory framework

The Petroleum Act, 2019

Background

The Petroleum Act was enacted in March 2019 to consolidate into one statute the laws relating to petroleum operations. Previously, the upstream petroleum industry was regulated by the Petroleum (Exploration and Production) Act, while midstream and downstream operations were regulated by the Energy Act, 2006 – now repealed by the Energy Act 2019.

The Petroleum Act 2019 and the Energy Act 2019 bring Kenya's legislative framework on the energy sector in line with current industry standards and practices. The Petroleum Act 2019 is anticipated to enhance transparency and accountability in petroleum agreements and contracts. The Act also addresses important issues such as revenue sharing, local content and licensing of petroleum operations.

Regulatory Authority

The Energy and Petroleum Regulatory Authority (EPRA) was established as the successor to the Energy Regulatory Commission (ERC) under the Energy Act, 2019 with an expanded mandate of inter alia regulation of upstream petroleum and coal. The key functions of the Authority specific to the oil & gas sector include to:

I. Regulate importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products excluding crude oil;

II. Regulate exploration, extraction, production, processing, transportation, storage exportation, importation and sale of coal bed methane gas and other energy forms;

III. Regulate, monitor and supervise upstream petroleum operations in Kenya in accordance with the law relating to petroleum, the regulations made thereunder and the relevant petroleum agreement;

IV. Provide such information and statistics in relation to upstream petroleum operations in Kenya to the Cabinet Secretary responsible for matters relating to petroleum as may be required from time to time;

V. Collect, maintain and manage upstream petroleum data; and

VI. Receive, review and grant an application for a nonexclusive exploration.

Petroleum rights and licensing

Upstream petroleum: A person wishing to undertake upstream petroleum operations is required to execute a petroleum agreement under the Petroleum Act 2019 or obtain a non-exclusive exploration permit from EPRA in respect of a block for the purpose of obtaining geological, geophysical and geochemical information.

Midstream and downstream petroleum: A person wishing to undertake midstream and downstream petroleum operations may make an application for a licence, permit or certificate to the EPRA. EPRA may, within thirty days of receiving the application:

I. grant a licence, permit or certificate accordingly, either without conditions or subject to such conditions as the licensing authority may deem fit and shall be accompanied by the prescribed fee; or

II. reject an application for grant of such licence, permit or certificate.

The Petroleum Act 2019 has savings clauses which preserve all contractual rights, privileges, liabilities and obligations existing pursuant to the repealed Petroleum (Exploration and Production) Act

Establishment of the National Upstream Petroleum Advisory Committee

The Petroleum Act 2019 establishes the National Upstream Petroleum Advisory Committee whose principal role is to advise the Cabinet Secretary on various matters such as upstream petroleum operations, negotiation of and entering into petroleum agreements, suspension, revocation, termination or recall of a petroleum agreement, etc.

Model Production Sharing Contract

The Schedule to the Petroleum Act provides a Model Production Sharing Contract (Model PSC) to be used when entering into a petroleum agreement. The Model PSC has detailed clauses on exploration obligations, cost recovery, production sharing and taxation, contributions to a Training Fund and dispute resolution mechanisms such as UNCITRAL arbitration.

Local content requirements

The Petroleum Act has local content provisions which require a person undertaking petroleum operations to give priority to

I. comply with local content requirements in all operations;

II. give priority to services provided and goods manufactured in Kenya where the goods meet the specifications of the petroleum industry; and

III. ensure that priority is given for the employment or engagement of qualified and skilled Kenyans at all levels of the value chain

Transparency and accountability

The Petroleum Act mandates the Cabinet Secretary to develop a framework for reporting, transparency and accountability in the upstream petroleum sector, which includes the publication of all petroleum agreements, records, annual accounts and reports of revenues, fees, taxes, royalties and other charges, as well as, any other relevant data and information that support payments made by the contractor and payments received by the national government, county governments and local communities. This is aimed at increasing transparency and accountability in entering into petroleum contract as well as enhancing the right of access to information that is provided under the Constitution.

Revenue sharing between the National Government, County Government and local community

The Petroleum Act makes provisions for sharing of revenue from upstream petroleum operations between the National Government, County Government and local communities, a hitherto divisive issue. The apportionment of revenue under the Petroleum Act is as follows:

I. 75% to the National Government;

II. 20% to the County Government; and,

III. 5% to the local community, payable to a trust fund managed by a board of trustees established by the County Government in consultation with the local community. The Act allows Parliament to review these percentages after ten years from commencement of the Act.

Recent developments to the regulatory framework

In order to operationalise the Energy Act 2019, EPRA has developed The Draft Energy (Energy Management) Regulations, 2020. The main objective of the Regulations is to improve energy efficiency and

conservation among the industrial, commercial and institutional facilities.

In line with the public participation requirements of the Statutory Instruments Act No. 23 of 2013, EPRA embarked on public and stakeholder consultations with a view to receiving comments on the proposed Draft Energy (Energy Management) Regulations, 2020 which ended on 7th November 2020

Similarly, in order to operationalise the Petroleum Act 2019, EPRA has developed a set of eleven (11) draft regulations, namely:

- The Petroleum (Business Licensing and Facility Construction Permit) Regulations, 2020
- The Petroleum (Operation of Common User Petroleum Facilities) Regulations, 2020
- The Petroleum (Importation of Petroleum Products) Regulations, 2020
- The Petroleum (Information and Statistics) Regulations, 2020
- The Petroleum (Licensing of Petroleum Road Transportation Business, Road Tankers and Drivers) Regulations, 2020
- The Petroleum (Lubricants Facility Construction and Business Licensing) Regulations, 2020
- The Petroleum (Minimum Operational Stock) Regulations, 2020
- The Petroleum (Pricing) Regulations, 2020
- The Petroleum (Products Quality Management) Regulations, 2020
- The Petroleum (Retail Station Construction and Licensing) Regulations, 2020
- The Petroleum (Strategic Stocks) Regulations, 2020

These draft regulations were published in the Kenya Gazette Vol. CXXII No. 242 of 31st December 2020. Stakeholders have until 1 March 2021 to provide feedback that will be considered for incorporation in the regulations that will be eventually gazette after going through the legislative process.

Fiscal regime

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

Generally, companies in the oil & gas industry are subject to the same tax regime as other companies in other industries.

Significant Developments in the Fiscal Regime

Minimum tax based on turnover

The Finance Act, 2020 introduced a minimum tax of 1% on gross turnover. The minimum tax will not be applicable to exempt income, employment income, residential rental income, capital gains, persons subject to turnover tax, insurance business, any business whose retail price is regulated by the Government and persons undertaking mining or upstream oil and gas activities. Minimum tax will, however, apply to persons involved in midstream and downstream oil and gas activities.

The minimum tax is intended for taxpayers who are carrying out business and thus earning revenue, but their tax payable is lower than 1% of their gross turnover. The minimum tax will be a final tax and is payable in instalments that are due on the same date as the current instalment tax obligations (i.e. on the 20th day of the fourth, sixth, ninth, and twelfth month of a company’s financial year).

Overhaul of the Second Schedule to the Income Tax Act

The Second Schedule to the Income Tax Act (“ITA”) has been overhauled and new capital/ investment allowances rates have been provided.

Further, the Act has reduced the highest capital allowance that was granted to businesses to encourage them to invest outside Nairobi, Mombasa and Kisumu from 150% to 50%. This will negatively affect power producers with plants outside of Nairobi, Mombasa and Kisumu. This has been a significant incentive for the power generation sector, and it is to be seen whether it will have an impact on their costs of production. The highest capital allowance is now 50% in the first year of use and 25% of the residual value per year on reducing balance.

No transition provisions have been included in the new Second Schedule. Such transition provisions would provide guidance on the treatment of the tax written down balances that will be carried forward from previous years. Thus, it is unclear whether taxpayers are required to compute the residual capital/ investment allowances using the previous capital allowances rates or the new rates provided.

Under the new Second Schedule, taxpayers will be required to track and compute capital/ investment

allowance for each asset unlike in the previous schedules where various machinery, equipment, furniture and fittings that were subject to wear and tear allowances were pooled together. This may prove to be administratively cumbersome particularly when tracking assets such as machinery, equipment, furniture and fitting which tend to be of relatively low value but of significant quantity.

Lastly, the new Second Schedule lacks the concession allowance as well as provisions in the previous schedule that allowed for the transfer of depreciable assets at the tax written down value between related companies.

Income tax exemptions reduced

The Finance Act, 2020 and the Tax Laws Amendment Act, 2020 have reduced the current income tax exemptions. Notable tax exemptions that that have been repealed and that may have an impact in the oil & gas industry include:

- Compensating tax accruing to a power producer under a power purchase agreement.
- The income of a registered home ownership savings plan.
- Dividends received by a registered venture capital company, special economic zone (SEZ) enterprises, developers, and operators licensed under the SEZ Act.
- Dividends paid by an SEZ enterprise, developers, or operators to any non-resident person.
- Interest income generated from cash flows passed to the investor in the form of asset-backed securities.
- Income from employment paid in the form of bonuses, overtime, and retirement benefits payable to the employees in the lowest tax band.

Reinstatement of pre-COVID-19 Income Tax and Value Added Tax rates

On 25 April 2020, the President of Kenya assented to an Act of Parliament, the Tax Laws (Amendment) Act, 2020 (the Act). The Act made various changes to the prevailing tax laws in Kenya. Some of the amendments were aimed at cushioning the public and the economy at large against the economic ramifications of the COVID-19 pandemic including:

- the reduction of the VAT rate from 16% to 14% (effective 1 April 2020 pursuant to a legal notice issued by the Cabinet Secretary in charge of the National Treasury);
- the reduction of the top band rate for Pay-As-You-Earn from 30% to 25%; and
- the reduction of the corporate income tax rate for resident companies from 30% to 25%. This will apply from the 2020 year of income.

However, on 23 December 2020, the President assented into law The Tax Laws (Amendment) (No.2) Act, 2020 which is now in force and provides that effective 1 January 2021:

- the Value Added Tax rate will revert to 16% from 14%;
- the top band rate for Pay-As-You-Earn will revert to 30% from 25%; and
- the corporation tax for resident companies will revert to 30% from 25%.

Proposed Tax Reforms

For a number of years, the Government has announced its intention to overhaul the ITA. The draft law is yet to be published or presented to the National Assembly for debate.

Forms of contracts

Product sharing contracts apply.

Local content regulations

Local content regulations yet to published (also see above under “Local content requirements”) .

Taxation regime

Direct Taxes

Corporate 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%. The repealed model PSC was a ‘taxes paid’ PSC in that the Government’s share of crude oil includes the taxes of the petroleum company (except for taxes on disposal of interest in a petroleum agreement and any tax the petroleum company is liable to deduct from payment to suppliers). The current model PSC based on the 2019 Petroleum Act is not a ‘taxes paid’ PSC thus the petroleum company is responsible for all its taxes and.

that the Government's share of oil excludes the taxes of the petroleum company

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

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

Ring-fencing

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

Tax losses

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

Thin capitalisation

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

Transfer pricing (TP)

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

Withholding tax on deemed interest

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

Withholding tax

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

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

^The 2020 tax amendments changed the non-resident WHT on dividends to 15% other than a dividend paid by a petroleum company to a non-resident shareholder (paragraph 16(a) of the Ninth Schedule to the ITA.

*Natural Resource Income means:

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

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

Subcontractors

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

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

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

Disposals

Direct disposals (farm out transactions)

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

Indirect disposals (share sale transactions)

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

Other Capital Gains requirements

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

Notification to the Kenya Revenue Authority

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

Double tax treaties

Kenya has DTTs with Canada, Denmark, France, Germany, India, Iran, Norway, Qatar, Sweden, UK, United Arab Emirates, Zambia, South Korea and South Africa.

Indirect Taxes

Value-added tax (VAT)

The Tax Laws Amendment Act, 2020 (TLAA) revised the basis for determination of taxable value for petroleum products listed in Section B of the First Schedule to the VAT Act. Initially, the taxable value of these petroleum products excluded excise duty, fees, and other charges. However, with effect from 15 May 2020, taxable value of petroleum products will include any taxes, duties, levies, fees, and charges paid or payable for the supply.

Custom duties

There exists an exemption from import duty on machinery and inputs (excluding motor vehicles) imported by a licensed company for direct and exclusive use in oil, gas or geothermal exploration, development and distribution. However, this exemption is upon recommendation by the Ministry of Petroleum and Mining.

Import declaration fee

An import declaration fee at 3.5% of the declared customs value (Cost, Insurance and Freight) payable on importation. A minimum of KES.5,000 is payable in advance.

Railway development levy

Railway Development levy is payable on importation at 2% of the declared customs value (Cost, Insurance and Freight).

Excise duty

Excise duty is payable on petroleum products sold or imported into Kenya.

Stamp duty

Farm out

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

Share sales and other transactions

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

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

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

Other Taxes

Taxation of Oil Field Service Companies (OFS)

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

Employment income tax

Resident individuals, including expatriates, are taxed on their worldwide income based on the resident tax rates, while non-residents pay tax on Kenyan- sourced income only. The resident minimum tax rate is 10% and the maximum rate is 30%. Employees are required to file annual returns. Employers have the responsibility to withhold and pay the tax due from employees' entire remuneration on a monthly basis.

Social security contributions

Employees (including expatriates) and employers are all required to contribute to the National Social Security Fund ("NSSF") where each contributes a minimum of KES 200 per month. However, the contributions are set to increase to a maximum of KES 1,080 per month on the first year of implementation of the National Social Security Fund Act, currently halted by a pending court case.

National Health Insurance Fund (NHIF)

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

National Industrial Training Authority (NITA)

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

These provisions apply to employees across all sectors in Kenya.

Railway development levy

Railway Development Levy applies on all goods imported into the country for home use at the rate of 2% of the customs value of the goods.

Capital gains tax

Transfer of property is subject to capital gains tax at the rate of 5% of the net gain. This tax is final tax.

Incentives in the oil & gas industry

Kenya operates a taxes paid PSC regime.

Compliance Requirements

Tax returns and payments

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

Penalties

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

Interest

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

Tax Audits

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

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

Power and Utilities Sector

Brief overview of Power and Utilities development in Kenya

The power sector has four distinct subsectors which are generation, transmission, distribution, and geothermal resource development.

Generation

The function of generation of electricity is executed by Kenya Electricity Generating Company (KenGen) and independent power producers. There have been a few significant developments in 2020 and 2021 including:

- Approval by EPRA for the 40 MW (photovoltaic) Kisumu Solar One project;
- Commencement of exploration drilling at a prospect with over 600MW in geothermal potential in Baringo County by the state-owned Geothermal Development Company; and
- Connection of the 100 MW Kipeto wind farm to the grid.

These developments showcase the country's commitment to embrace low cost renewable energy technologies in her efforts to ensure availability of affordable and reliable energy. Currently, the total installed capacity in the country is 2,791 MW against peak demand of 1,926 MW.
The generation mix is as shown in the table below.

Source	Installed capacity	Capacity %
Geothermal	828	29.7%
Hydro	826	29.6%
Thermal	749	26.8%
Wind	336	12.0%
Solar	52	1.9%
Total	2791	100%

Source: Energy and Petroleum Regulatory Authority

The country continues to move away from reliance on hydro power as its main source of power due to the unpredictable rain patterns that normally result in power shortfalls. During such periods, the government has had to rely on power from existing thermal power plants to meet demand.

On the other hand, there has been increased focus on investments in other renewable energy sources, most notably geothermal power (on project size rather than number of projects) which is considered a highly reliable and efficient base load power source. Geothermal power total installed capacity has increased from 12% in 2012 to 29.7% in 2020 and is expected to be the main contributor to base load as Kenya seeks to achieve the Vision 2030 strategy.

The adoption of renewable energy technologies has seen reduction in the use of thermal power plants to average 11.3% for 2020. This has had a positive impact on the electricity tariffs as dependence on expensive generation sources is minimized.

According to the Power Generation and Transmission Master Plan, 2016, the country's electricity peak demand is expected to quadruple to 6,500MW by 2035. According to Vision 2030, the country's economic blueprint, the following projects are the key drivers of demand for electricity:

- Lamu Port-South Sudan-Ethiopia Corridor (LAPSSET);
- Electrified railway lines;
- Konza Techno City; and
- Special Economic Zones.

Transmission

The Kenya Transmission Company (Ketraco), which is 100% owned by the Government of Kenya, is responsible for the development of the national transmission grid network. To facilitate a regional power pool, Ketraco is in the process of implementing regional interconnection lines with neighbouring countries such as Uganda, Ethiopia and Tanzania.

Distribution

Currently, Kenya Power and Lighting Company (KPLC) is the sole off-taker of electricity in Kenya. KPLC sells the electricity to the final consumers.

The country is aiming at achieving universal access to electricity by 2022 through the development of transmission and distribution infrastructure.

Geothermal resource development

Geothermal resource development is undertaken by Geothermal Development Company, a company that is 100% owned by the Government of Kenya.

Legal Framework

The legal framework governing the power and utilities sector in Kenya, entails both policies and Acts of Parliament.

Sessional Paper No. 4 of 2004

The Sessional Paper No. 4 of 2004 is a policy document that stipulates the liberalisation reforms implemented in the energy sector in the mid-1990s. Its vision is to promote equitable access to quality energy services at least cost while protecting the environment. The paper therefore lays down the policy framework upon which cost effective, affordable and adequate quality energy services will be made available to the domestic economy on a sustainable basis over the period 2004-2023.

Following enactment of the Energy Act,2019 the Cabinet Secretary has an obligation to publish a National Energy Policy which shall be reviewable every five years. In the same vein, the Cabinet Secretary has been tasked with publishing an annual report on the implementation of the national policy.

Energy Act, 2019

The Energy Act, 2019 came into effect on 28 March 2019. The enactment served to overhaul the old and outdated energy legislative framework such as the Geothermal Resources Act and Kenya Nuclear Electricity Board Order, considering the contemporaneous advancements made in the energy sector.

The Act consolidates all the laws relating to the energy sector as well as set out the functions of the County and National Government in respect of promotion of renewable energy, exploration, recovery and commercial utilization of geothermal energy as well as regulation of production, supply and utilization of electricity and other energy forms.

The Act provides for the participation of private investors in the distribution of power to consumers in the country. In addition, the Act established three key institutions namely, the Energy and Petroleum Regulatory Authority (EPRA), Rural Electrification and Renewable Energy Corporation (REREC) and Nuclear Power and Energy Agency (NPEA).

Under the Act, county governments are required to develop subnational energy policies. The county energy policies are crucial to effective energy governance in Kenya since counties have a big impact on the investment climate for clean and alternative energy within and beyond the counties.

In 2020, EPRA further developed the Draft Energy (Solar Photovoltaic Systems) Regulations, 2020 which are a revision of the Energy (Solar Photovoltaic Systems) Regulations, 2012. The goal of the Regulations is to streamline the manufacture, importation, distribution, design, installation, testing, commissioning, maintenance and repair of solar photovoltaic systems and components in Kenya. This will be done through among others, licensing of players in the solar photovoltaic value chain and enforcement of approved standards for the solar photovoltaic industry. EPRA has been engaging stakeholders on these regulations which are aimed at regulating the growing uptake in of solar photovoltaic systems in Kenya and these regulations are not yet in force.

Regulatory Framework

The Regulatory framework governing the Power Sector involves various actors, some deriving their mandate under the law while other key regulators in the Power Sector include:

Energy and Petroleum Regulatory Authority (EPRA)

The Energy and Petroleum Regulatory Authority was established under the Energy Act, 2019. Key among its various objectives and functions under the law, is to regulate –

- generation, importation, exportation, transmission, distribution, supply and use of electrical energy apart from licensing of nuclear facilities;
- importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products apart from crude oil;
- production, conversion, distribution, supply, marketing and use of renewable energy;
- exploration, extraction, production, processing, transportation, storage exportation, importation and sale of coal bed methane gas and other energy forms;

The Authority replaces the Energy Regulatory Commission which previously discharged the same mandate.

Energy and Petroleum Tribunal

The Act also established the Energy and Petroleum Tribunal to resolve energy and petroleum disputes. The Tribunal also hears and determines appeals from decisions of the Authority or any licensing authority. This body is set up as an independent body free of the state influence under the law.

Rural Electrification and Renewable Energy Corporation (REREC)

Established under the Energy Act, REREC is mandated with overseeing rural electrification in Kenya. The Corporation is also charged with promotion of renewable in Kenya. In so doing, it is tasked with developing a renewable energy master plan, undertaking feasibility studies and maintaining data with a view to availing the same to developers of renewable energy resources.

Nuclear Power and Energy Agency (Agency)

In a bid to diversify its energy sources portfolio, the country is taking measures towards exploiting nuclear energy for electrical utility. Accordingly, the Energy Act provides for an Agency which shall be the nuclear energy program implementing organisation and which is tasked with promoting the development of nuclear electricity generation in Kenya. In line with this goal, the Agency is mandated to carry out research, development and dissemination activities in the energy and nuclear power sector. The Agency is also tasked with proposing policies and legislation necessary for the successful implementation of a nuclear power program.

Other actors in the Regulatory space include:

- Ministry of Energy: Responsible for creating an enabling environment for efficient operation through formulating and articulating energy policies.
- The National Treasury: Charged with the responsibility of formulating financial, fiscal and economic policies.
- Kenya Revenue Authority: Charged with the responsibility of revenue collection in line with the various tax legislations.

Forms of contracts

An entity seeking to generate electricity and sell to KPLC is required to enter into a Power Purchase Agreement (PPA). The parties to a PPA are KPLC and

the Power Producer. However, EPRA must approve PPAs before they are signed by the parties.

Fiscal regime

The fiscal regime for the taxation of the Power Sector is regulated by the Income Tax Act ("ITA"), VAT Act 2013, Stamp duty Act, East African Community Customs Management Act ("EACCMA") and the Excise duty Act 2015.

Significant Developments in the Fiscal Regime

Minimum tax based on turnover

The Finance Act, 2020 introduced a minimum tax of 1% on gross turnover. The minimum tax will not be applicable to exempt income, employment income, residential rental income, capital gains, persons undertaking mining or upstream oil and gas activities, persons subject to turnover tax, insurance business and any business whose retail price is regulated by the Government. Minimum tax will apply to persons involved in midstream and downstream oil and gas activities.

The minimum tax is intended for taxpayers who are carrying out business and thus earning revenue, but their tax payable is lower than 1% of their gross turnover. The minimum tax will be a final tax and is payable in instalments that are due on the same date as the current instalment tax obligations (i.e. on the 20th day of the fourth, sixth, ninth, and twelfth month of a company's financial year).

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Lastly, the new Second Schedule lacks the concession allowance as well as provisions in the previous schedule that allowed for the transfer of depreciable assets at the tax written down value between related companies.

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- Compensating tax accruing to a power producer under a power purchase agreement.
- The income of a registered home ownership savings plan.
- Dividends received by a registered venture capital company, special economic zone (SEZ) enterprises, developers, and operators licensed under the SEZ Act.
- Dividends paid by an SEZ enterprise, developers, or operators to any non-resident person.
- Interest income generated from cash flows passed to the investor in the form of asset-backed securities.
- Income from employment paid in the form of bonuses, overtime, and retirement benefits payable to the employees in the lowest tax band.

Withholding tax on dividends payable to non-residents increased to 15%

Taxpayers will be required to withhold tax on dividends payable to non-residents at a rate of 15% up from 10%. This will materially increase the effective tax rate for foreign owned companies and hence discourage foreigners from investing in Kenya. However, where a

double tax treaty is applicable, the rate specified as the limit in the double tax treaty would take precedence.

Change of VAT status of goods from exempt to standard rate

Effective 25 April 2020, the VAT status of the following goods was changed from exempt to standard rate:

- taxable supplies imported or purchased locally for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid.
- Taxable supplies imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act (No. 12 of 1982), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306);

Effective 1 July 2021 the VAT status of - specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power upon the recommendation of the Cabinet Secretary responsible for matters relating to energy;

This change will result in increased prices of the goods which will consequently have a negative impact on the drive towards using 'clean fuel' and a greener ecosystem - was changed from exempt to standard rate.

Reinstatement of pre-COVID-19 Income Tax and Value Added Tax rates

On 25 April 2020, the President of Kenya assented to an Act of Parliament, the Tax Laws (Amendment) Act, 2020 (the Act). The Act made various changes to the prevailing tax laws in Kenya. Some of the amendments were aimed at cushioning the public and the economy at large against the economic ramifications of the COVID-19 pandemic including:

- the reduction of the VAT rate from 16% to 14% (effective 1 April 2020 pursuant to a legal notice issued by the Cabinet Secretary in charge of the National Treasury);
- the reduction of the top band rate for Pay-As-You-Earn from 30% to 25%; and
- the reduction of the corporate income tax rate for resident companies from 30% to 25%. This will apply from the 2020 year of income.

However, on 23 December 2020, the President assented into law The Tax Laws (Amendment) (No.2) Act, 2020 which is now in force and provides that effective 1 January 2021:

the Value Added Tax rate will revert to 16% from 14%;
the top band rate for Pay-As-You-Earn will revert to 30% from 25%; and
the corporation tax for resident companies will revert to 30% from 25%.

Proposed Tax Reforms

There may be changes looming in the horizon from the proposed Income Tax Bill, 2020 which is yet to be enacted into law.

Incentives in the Power Sector

Income Tax Act (ITA)

The ITA exempts withholding tax on interest payments on loans from foreign lenders provided loan proceeds were used for investing in the energy or water sectors, or in roads, ports, railways or aerodromes. In line with the Statutory Instruments Act, unless a regulation is passed, the aforementioned WHT exem
ption on interest will expire on 28 May 2025.
In addition, the ITA exempts withholding tax on payments made to a non-resident for services rendered under a Power Purchase Agreement. In line with the Statutory Instruments Act, unless a regulation is passed, the aforementioned WHT exemption on payments made to a non-resident will expire on 20 August 2025.

East Africa Community Customs Management Act (EACCMA)

The EACCMA Act, exempts from payment of import duty, specialized equipment for generation of solar and wind energy equipment, Photovoltaic (PV) Modules, Direct Current Charge Controllers, Direct Current Inverters including accessories and deep cycle batteries which use and /or store solar power.

Stamp duty Act

The Stamp Duty Act, exempts instruments executed on transactions involving loans from foreign sources received by investors in the infrastructure development sector from stamp duty.

Liberia

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Oil and Gas Sector

Brief overview of the Oil & Gas industry in Liberia

Generally, Liberia does not have oil & gas in commercial quantity yet. The authority has declared that Liberia is still in the exploration stage. However, there are potential discoveries made by African Petroleum (AP) which needs further evaluation.

Government participation in the sector is through the National Oil Company of Liberia (NOCAL). The autonomous body has been dormant for over three years due to alleged mismanagement of funds.

On 1 August 2019, the company signed a multiyear well data management agreement with Core Laboratories Sales BV. The venture will see the management of value addition and re-organisation of oil well data collected by oil companies that operated in Liberia since 1970. The project is called the “Regional Reservoir and Seal Study of Liberia”. With this project, NOCAL is hopeful to receive revenue from valuable data that companies are expected to pay for. This deal shows that investors are beginning to show interest in the sector again. The government is excited and willing to work with investors in the sector.

Economic Updates

The country faces unstable economic conditions, courtesy of persistent exchange rate fluctuations and inflationary pressures. The economy risks a potential downward growth due to rapid decline in the price of the country’s primary commodity export on the global market; and global challenges, including poor road and limited energy supply.

On 16 October 2019 President George Weah signed the amended Petroleum Act of 2019 into law. The new Act allows for the executive allocation of oil blocks to the National Oil Company of Liberia (NOCAL). It also provides for an increase in the block size from 772 sqm to a maximum of about 1351 sqm.

The Act further stipulates that petroleum agreements may only be granted in two forms, the principal one being the Executive Allocation to NOCAL, and International Open Competitive Bidding. In addition, each petroleum agreement is now required to provide for a 5% equity stake for companies owned by individuals of Liberian citizenship.

The key regulators in the industry include:

1. Liberia Petroleum Refining Company (LPRC);
2. Liberia Petroleum Regulatory Authority
3. National Oil Company of Liberia (NOCAL)
4. Liberia Revenue Authority (LRA)
5. Environmental Protection Agency (EPA)
6. Liberia Chamber of Commerce (LCC)
7. National Investment Commission (NIC)
8. Liberia Extractive Industry and Transparency Initiative (LEITI)

Fiscal and taxation regime

In addition to an update provided last year, Currently, the regulatory framework for the taxation of petroleum operations is administered by the Liberia Revenue Authority in collaboration with the Ministry of Lands, Mines and Energy which oversees and regulates non-tax compliance and other compliance requirements.

Generally, taxes are levied on the taxable income of a legal person engaged in petroleum project at a rate of 30% percent. Corporate tax rate and basis for determining taxable income may be prescribed in a petroleum agreement.

Forms of contract

The most common forms of petroleum contracts in Liberia include:

Reconnaissance, Seismic and Technical Evaluation / exploration Contract

This contract grants licencee rights to carry out hydrocarbon reconnaissance work at own risk and expense, and within the defined perimeter and to an unlimited depth, without exclusion, any operation for the reconnaissance and exploration of hydrocarbons in Liberia.

A permit with respect to reconnaissance and seismic data collection does not give the holder any right to conclude a petroleum contract except where such privilege is expressly granted.

Hydrocarbon Exploration and Development Agreement

This permit is usually granted by NOCAL to a petroleum company to carry out both exploration as well as production and development activities in a commercially exploitable hydrocarbon reserve within a defined area and may also include a Petroleum Sharing Contract (PSC).

A petroleum contract which provides for the reimbursement of petroleum costs and remuneration to a licence holder to be paid in cash is called a “services and risk contract”.
The exploration phase under this contract is usually a 7-10-year period divided into three phases while the development period is usually 25 years. A PSC for gaseous hydrocarbons may differ from that of liquid hydrocarbons.

Joint Venture Agreements

A licence holder may enter into an incorporated or unincorporated joint venture (JV) agreement with other petroleum companies in connection with an exploration or development agreement.

Petroleum project’s income, expenses, credits, profit and /or loss is attributed to the JV partners in accordance with their interests for the purpose of determining taxable income, loss, credits and tax liability for each partner.

Government Equity participation

Generally, the Government of Liberia is, through NOCAL, entitled to participate in ownership of PSC. Generally, NOCAL is entitled to receive, free of charge, equity interest in applicable PSC of up to 20% of the authorised, issued and outstanding capital shares existing at any time.

To an extent, NOCAL elects to exercise its participation right in applicable PSC, NOCAL hold the shares in trust for the Government of Liberia, the Ministry of Finance and the National Investment Commission. However, NOCAL may also expressly waive its equity participation interest in applicable PSC.

Incentives in the Oil & gas

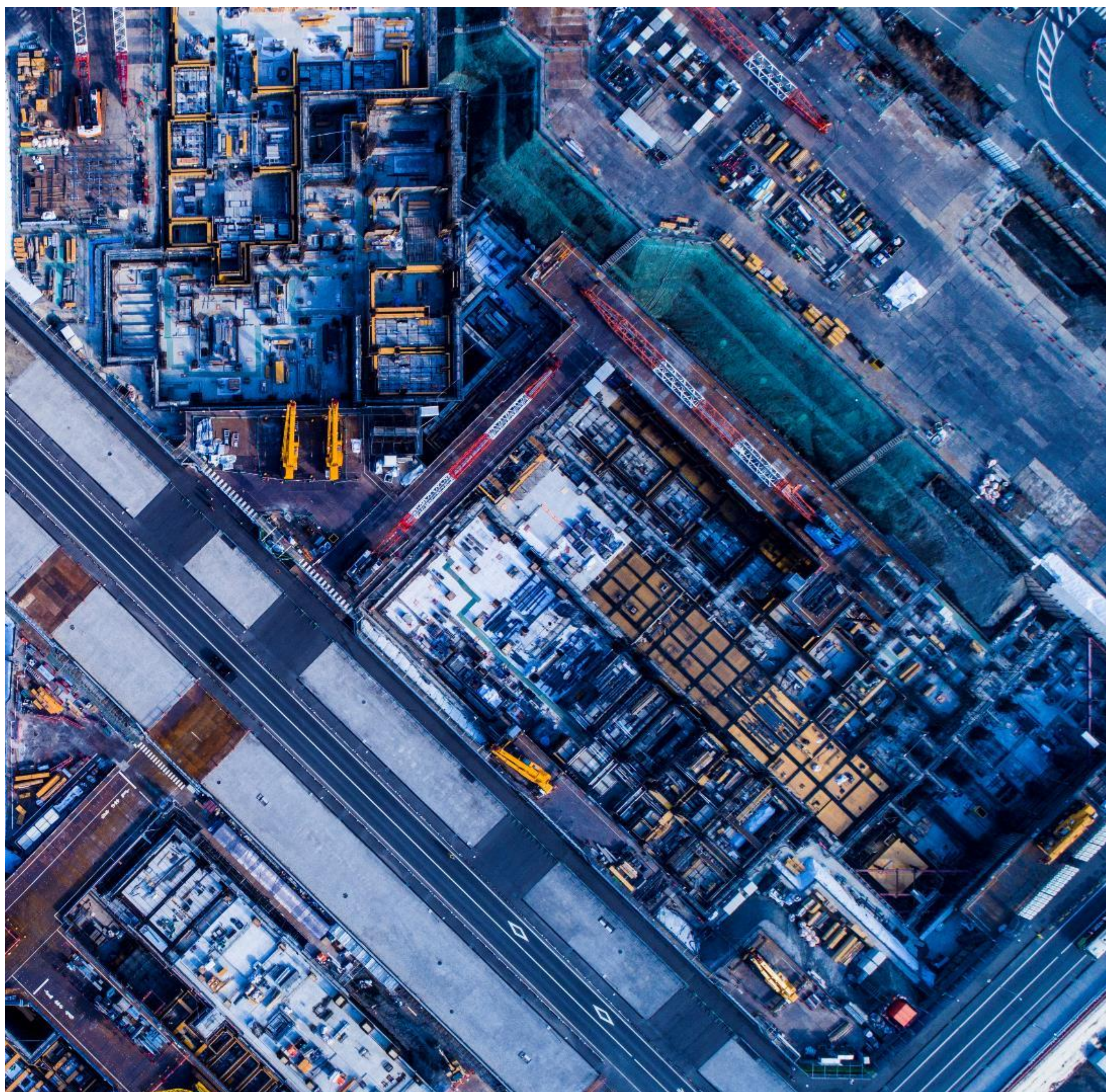
Generally, incentives are given under an agreement signed with the Government of Liberia.
Petroleum operators are granted the right to import into Liberia and export out of Liberia including on behalf of their contracts and subcontractors, all goods necessary in the petroleum operations are free of all taxes and duties.

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

In addition, all expenses which are wholly, exclusively and necessarily incurred in connection with the operations of a petroleum project except for capital expenditure (which enjoy capital allowance) are allowable for tax purposes.

Local content regulations

There are no specific local content regulations in Liberia.



Power and Utilities Sector

Brief overview of Power and Utilities development in Liberia

The Ministry of Mines and Energy is responsible for developing and formulating policies and the administration of the law as formulated.

Liberia Electricity Regulatory Commission is a newly created regulatory agency that is responsible for licensing, issuing regulations to implement the electricity law, monitor and enforce technical, performance and security regulations and standards.

The 2015 Electricity law of Liberia is the act that regulates the electricity sector and provides legal and regulatory framework, methods and procedures to enhance and promote the sector.

On 4 October 2019, the forty-fourth legislature of the Republic of Liberia approved an act to amend chapter 15 of the Penal Law by adding thereto a new section 15.88 which provide penalties for power theft.

Regulatory Frameworks

The key regulators of the Power and Utilities sector are:

1. Liberia Electricity Corporation;
2. Liberia Electricity Regulatory Commission; and
3. Ministry of Lands and Mines and Energy.

Fiscal regime

Power and utilities sector do not have any special taxation regime. Players in the industry are taxed just like any ordinary entity operating in Liberia. Currently, the income tax rate applicable is the higher of the regular tax (25% of taxable income) or the minimum tax (2% of gross income). Some utilities such as electricity and provision of water for a fee attract 10% GST.

Libya

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Oil and Gas Sector

Brief overview of the Oil & Gas industry in Libya

Libya is located in North Africa and situated on the Mediterranean coast spaning 1.77 million square kilometres. The population is over 6 million, with 97% being Arab and Berber and 3% being Sunni Muslim. In 2011, the civil war overthrew the previous regime who had been in power for 42 years. However, Libya struggled to transition into a more democratic state despite having two rival administrations since July 2014 and the security situation in the country. This has significantly hindered activity in the oil & gas sector.

The existing Petroleum Law, Law 25, was issued in 1955. In 1959, the first commercial discoveries were made in the Sirte Basin at the Amal and Zelten fields and by 1961 the first exports commenced. The first offshore discovery was made in 1976 at ENI's Bouri Field. Libya joined OPEC in 1962 and by the late 1960s Libya was producing more oil than Saudi Arabia, approximately three million barrels of oil per day.

The original Concession Agreements (CAs) granted all production rights to the International Oil Companies (IOCs) and the state received income by way of taxes and royalties. In 1973, the. Participation Agreements were forced on to the IOCs entitling the Libyan National Oil Corporation (LNOC) to 51% production interest in the agreements.

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

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

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

Significant new developments

Libya has managed to increase its oil output to more than 1 million barrels a day during 2016 after what appears to be successful developments to reopen pipelines feeding the export terminals of Zueitina, Zawiya, Ras Lanuf, Es Sider and Mellitah. Mustafa Sanalla. Chairman of the NOC, also was hopeful that oil production will increase as the security situation improves in the country.

Reservoir estimates

According to the OPEC, Libya had total proven oil reserves of 48.4 billion barrels as of January 2014 – the largest in Africa and in the top 10 globally. Approximately 80% of those reserves are situated in the Sirte Basin. Libyan crude is sweet (low Sulphur content) and generally light (high API gravity).

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

Fiscal Regime

Institutional oversight and regulatory framework

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

The Dewan (auditors of government contracts) performs cost recovery audit of the IOCs of the 2 remaining CA. The non-operating IOCs of CA have Libyan branches which are cost recoverable and are audited by the Dewan. The Tax Department audits the IOCs for undeclared salaries and wages and to ensure the contracts with their main service providers have been appropriately registered.

Forms of Contract

Exploration and Production Sharing Agreements (EPSAs)

Since the 1970s, EPSAs have been offered to the IOCs. EPSAs are signed with LNOC. The exploration phase has a minimum work commitment, normally for a period of 5 years and the IOCs take sole risks. If a commercial discovery is made, it is ring fenced and the remaining acreage is released. The IOCs can normally negotiate extending exploration rights in the remaining acreage with a newly agreed work commitment.

A branch of a newly formed foreign registered joint venture entity (between LNOC and the IOCs) is normally appointed as the operator for the development phase and exploitation phase. The costs are divided 50-50 between LNOC and the IOCs for the development phase. The costs of the exploration phase are shared per the production interests.

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

Concession Agreements

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

Joint Operating Agreements

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

Technical Service Agreements

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

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

Government participation

Since 2005 new exploration acreage has been released based on 4 open bid rounds where pre-approved IOCs have been allowed to submit bids. The bids have been

based on two factors:

- Firstly, on the lower share in any discovery and
- If there were a tie, the amount of signature bonus being offered.

The open bid rounds have been considered a success by LNOC due to the competitive bids being tendered.

The Participation Agreements forced the then concession holders to surrender 51% of their stake to the LNOC. In the last 5 years, a number of these agreements have come to the end of their period and the IOCs have been able to renegotiate their interests in the old agreements but at a significantly lower stake in line with the recent open bid rounds.

Regulatory Framework

Upstream Industry

Libya has had a policy of trying to spread production rights across nations. LNOC has in the past tried to prevent offshore deals that swap production rights between different foreign entities. Current EPSAs give LNOC first refusal to the sale of any production rights. Libyan oil exports during 2010 went approximately 25% to Italy, 15% to France, 10% to Germany, 10% to Spain and 40% to other countries.

Midstream Industry

Libya has a good network of pipelines, but they need modernization. The Melitah subsea pipeline has had a significant impact on gas exports since its opening in 2004. The pipeline is 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 damages during the 2011 conflict. In addition, the Farwah floating production and offloading unit is used for the Al Jurf field and the offshore Bouri field which has its own export terminal. LNOC has signed a JVOA with ENI, called Greenstream, which operates the Melitah Gas Plant.

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

Downstream Industry

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

Libya has, through its overseas retail arm Oil invest, refinery operations in Europe (Germany, Italy and Switzerland)

Capital investment regulations

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

Local Content Regulations

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

Taxation Regime

Basis of taxation

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

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

Direct taxes

Petroleum Tax

EPSA holders do not pay any petroleum related taxes and royalties. The wording of an EPSA states that the LNOC settle such taxes and royalties on behalf of the IOCs. Once an EPSA holder has recovered its

cumulative costs, it takes a reduced share of production based on factors stipulated in the agreement in lieu of those taxes and royalties having been settled on its behalf.

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

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

Company Income Tax (CIT)

CIT returns are to be filed latest four months after the year end and payments are in four equal instalments starting June, September, December and January the following year. The tax rate is 24%.

Capital Gains Tax

Libya has no separate Capital Gains Tax. Capital gains are added to the taxpayer’s normal taxable income and assessed accordingly.

Thin capitalisation

Libya has no thin capitalization regulations.

Profit repatriation

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

Transfer pricing regulation

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

Indirect taxes

Customs Duties

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

Stamp Duty

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

Value Added Tax (VAT) and Withholding Tax (WHT)

Libya has no value added taxes or withholding taxes.

Other Taxes

Employee Taxation

Payroll tax is withheld by the employer. It is 5% for the first LD 1,000 per month and 10% thereafter. Jihad tax at 3% is also applicable.

Social security contributions

Social security contribution rates are 3.75% by the employee and 11.25% by the employer on the employee’s basic salary.

Taxation of Oil Service Companies (OFS)

Oil service companies are subject to the normal tax law and the corporate tax rate is effectively 24%. The tax return needs to be submitted four months after the year end (i.e. 30 April) the following year.

Deemed Profit Taxation

In Libya, this does not apply to oil exploration and production companies but rather to service companies.

Other Tax Issues

Libyan Nationals or expatriates working in Libya are subject to various taxes, contributions and duties as follows:

- Income Tax: 5% – 10%
- Jehad Tax: 3% Social Security Contributions: 3.75% Employees and 11.25% Employers
- Social Solidarity Fund: 1%
- Stamp Duty: 0.5% on net salary

Incentives

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

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

Compliance requirements

Statement of Cumulative Expenditure

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

Financial Declarations

For the concession holders, a monthly Financial Declaration coupled with a payment for taxes and royalties is required within 30 days after the month-end. A final annual Financial Declaration is filed four months after the year-end. The notional Financial Declaration prepared by the EPSA holders should be filed quarterly, 30 days after the quarter-end. The final annual notional Financial Declaration should be filed three months after the year-end.

Branch Financial Statements

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

Tax Audits

The authorities carry out audits every three to four years. Normally the final tax assessment is based on deemed profit which is a percentage of the revenue.

Madagascar

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Oil and Gas Sector

Brief overview of the Oil and Gas industry in Madagascar

Economic updates
The Madagascar Financial Acts provide major economic indicator forecasts estimates twice a year: the initial financial act and the amended financial act, which modifies some provisions of the initial financial act according to the economic context.

Political Updates
During 2020, Madagascar's political climate is stable.

The new President took office on January 19, 2019 and is still facing a challenge to revitalize the economic recovery and risk of political instability.

The two chambers forming the parliament are now functional. The National Assembly has been operational since May 2019 and the Senate since January 2021.

Overview of the oil and gas developments in Madagascar
The oil and gas industry in Madagascar is regulated by the Petroleum Laws dated 1996 & 1999 (which regulate the upstream and downstream sectors respectively) however, several bills seeking to reform regulation of sector are in discussion.

The 1999 Petroleum Law created the *Office des Mines Nationals et des Industries Stratégiques* - Office of National Mining and Strategic Resources (OMNIS) to regulate upstream operations. The main functions of the OMNIS is to establish a national policy on mining activities, manage contractor relationships, and work with relevant experts on research and exploration. As for downstream operations, the regulating body is the *Office Malgache des Hydrocarbures* - Malagasy Office for Hydrocarbons (OMH).

Exploration of oil in Madagascar has been from the major blocks such as the Tsimiroro block.

Fiscal Regime

General Tax Regime
Oil and gas companies are subject to the same tax regime as other companies in Madagascar, with

Petroleum contractors' regime
Profit-Sharing Contract (PSC) structures apply.

Regulatory framework

- Upstream: Entities operating in the upstream sector are regulated by the Office des Mines Nationales et des Industries Stratégiques (OMNIS) – national office for national mining and strategic industries
- Downstream: Entities operating in the downstream sector are regulated by the Office Malgache des Hydrocarbures (OMH) – national office for hydrocarbons

Forms of contracts

Production Sharing Contract (PSC) structures apply.

Local Content Regulations

No local content regulations.

Taxation Regime

Direct Taxes

Direct Tax for petroleum contractors is composed of royalties and direct tax on hydrocarbons (IDH):

Royalties

- On crude oil: Royalty is charged at the rate of 8% to 20%, depending on barrel production; This is payable on hydrocarbon extracted from a well
- On natural gas: : Royalty is charged at the rate of 5% to 10% depending on m^3 production
- On heavy oil and bitumen: : Royalty charged is to as determined in the Production Sharing Contract

Direct Tax on Hydrocarbons (IDH): Direct Tax on Hydrocarbons can be representative and withheld instead of the Corporate Income Tax (refer to below) at Capital Gains Tax (refer to below).

Capital Gains Tax

Gains realized from the sale of interest is not taxable.

Corporate Income Tax (CIT)

Taxpayers realizing a turnover equal to or exceeding MGA 200 000 000 are subject to Normal Regime ("*régime du réel*") and those realizing a turnover under MGA 200 000 000 may choose between the Normal Regime and the Lower Revenue Regime ("*impôt synthétique*"). Oil and Gas companies are automatically subject to Normal Regime (by reference to the IDH).

Corporate Income Tax (CIT) is levied at the rate of 20% and is paid provisionally on a bimonthly frequency, based on the past year's CIT.

The final balance and return is due yearly either on 15-May or 15-Nov, depending on Financial Year end (31-Dec or 30-Jun respectively), or 15th day of the fourth month following the end of the financial year, for other closing dates of the financial year.

The minimum corporate income tax for Oil & Gas companies is 100.000 MGA plus 5/1000 of turnover.

Withholding taxes

A 10% withholding tax (WHT) applies on payments made to foreign services providers by a locally established beneficiary.

A 5% WHT also applies to payments for goods and services to local, non-registered suppliers.

Thin capitalisation and transfer pricing

For intercompany loans, the transfer pricing rule is that deductible interest is limited to interest calculated on twice the shareholders' equity at the rate of the Central Bank of Madagascar plus two (+2) points. In case of an infringement of this transfer pricing (TP) rule, tax adjustments and a 40% penalty shall be applied. In addition, where TP documentation is claimed during tax audit but not available, a penalty of MGA 10.000 000 penalty.

From 2020, the taxpayer is required to file TP documentation to the tax authority at the same time as the annual CIT return.

Double Tax Treaties (DTT)

Double Tax Treaties have been ratified with Mauritius, France, Canada and Morocco.

Indirect Taxes

Value-Added Tax

Following the change in the threshold of the Normal Regime (“*régime du reel*”), the taxpayer with an annual turnover equal to or greater than 400 000 000 MGA is now subject to VAT (20%).

Oil and companies are subject to the normal, common law tax regime as stated above. VAT Returns are due monthly on the 15th of the month following the operative event.

Sales Tax

N/A – refer to VAT

Customs and excise duties

Customs rate is levied at the rate of 0% - 20%, depending on the nature of the goods.

However, during the research and exploration, goods required for the petroleum project may be imported under temporary admission regime (AT), exempt from import and customs duties.

Property Tax

- Land Tax (IFT) (in local currency units per hectare): on any titled bare land.
- Tax on Built Property (IFPB): 5% to 10% on all titled buildings and surrounding land.

The local council votes rates.

Other taxes

Taxation of Oil Field Services (OFS) companies

OFS Companies are subject to the normal, common law taxation including VAT.

Employment tax (IRSA)

Employee’ remuneration is subject to 20% salary income tax, which is directly withheld by employer.

- Social Security contributions: National pensions (CNaPS): 13% (employer) and 1% (employee) of the gross salary, which is capped to 8 times of the minimum salary applicable.
- Medical care contributions (SMIE): 5% (employer); 1% (employee), – Antananarivo

Deemed Profit Taxation

Deemed profit taxation applies to all companies, regardless of their industry, specifically companies that are not legally registered but are conducting business in Madagascar, or where companies do not file tax returns in due time.

Tax Audits

Tax Audits are usually carried out every three (3) years. In practice, they happen with transactions that have high potential tax adjustments, which require lengthy and technical discussions with tax authorities.

By way of derogation, the financial year 2017 is still open to tax audit during 2021.

Power and Utilities Sector

Brief overview of Power and Utilities development in Madagascar

The business of generating, transmitting and distributing electricity, throughout the country, is carried out by Jiro sy Rano Malagasy (JIRAMA), a state-owned company are granted to.

JIRAMA is also in charge of collecting tax and royalties on electricity from taxpayers, which it then remits to the tax authority and the relevant municipality respectively.

The tax and royalties for electricity are composed of:

- Municipality tax and contribution for Fonds National pour l'Electricité (FNE)
- VAT at a rate of 20%

Tax and royalties on electricity are based on the value of the consumption of electricity.

The royalty rate is set by the corresponding municipality.

Mauritania

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Oil and Gas Sector

Brief overview of the Oil & Gas industry in Mauritania

The year 2019 was remarkable for the oil and gas industry in Mauritania. By the strengthening of collaboration between Mauritania and Senegal for the development of the gas field discovered at the maritime border shared by the two countries.

The two countries have stated their willingness to cooperate in the Agreement signed in February 2018, providing a framework for exploitation, equitable sharing of revenues, taxation, among others, applicable in the "Grand Tortue / Ahmeyim" field. This was renewed by the signing of an additional act defining the tax and customs regime for subcontractors working in this field.

The Mixed Unit dedicated to the management and control of the application of this additional act was set up in 2020.

Major companies that started Mauritanian offshore operations in 2019 include ExxonMobil, Total E&P and Shell.

Political Updates

In 2019, the country witnessed what was referred to as the first peaceful transfer of power since the country's independence in 1960. This was the outcome of a presidential election that held on 22 June 2019. This herald an era of hope for the Northwest African country.

Economic Updates

No major economic changes occurred during the year.

Regulatory framework

- **Société Mauritanienne des Hydrocarbures et de Patrimoine Minier**: It is the State Oil company that prepares and negotiates all petroleum conventions and contracts.

- **The Ministry of Petroleum and Renewable Energy**: This department controls oil and gas operations carried out in Mauritania.
- **The French Central Bank for Mauritania:** this bank keeps the National Fund for Hydrocarbons Revenue. They receive all Mauritanian hydrocarbons revenue.
- **The Strategic Orientation Committee for Oil and Gas:** This committee is in charge of assisting the President of the Republic and the Government in defining, supervising, evaluating and monitoring the implementation of the State policy on the development of oil and gas projects.

Form of Contract

Production sharing contract (PSC)

It is a service contract whereby the State or a State Company awards exclusive hydrocarbon exploration and exploitation rights within a defined perimeter, to one or several qualified persons or companies. The production sharing contract specifies the rights and obligations of the holder and of the State or a State Company, including the conditions for the sharing of the hydrocarbons produced and the recovery of petroleum costs incurred by the holder and its remuneration.

Taxation regime

The fiscal regime applicable to the oil and gas industry primarily consists of corporate tax, various indirect taxes, and a mineral and petroleum royalty regime.

Oil & Gas companies are subject to corporate income tax in accordance with the Income Tax Act #2011-044 of October 25th, 2011 amending and supplementing Law #2010-033 of July 20th, 2010 governing the Hydrocarbon Code (HCC).

However, in addition, the taxation of oil and gas companies, as defined, is regulated by the Title VI (the Custom & Tax of the HCC), which provides for specific treatment of various items applicable to these companies.

Thus, in accordance with section 86 of the HCC, the Contractor and its affiliates are exempt from all other taxes, including minimum tax, general income tax (and all other income taxes), withholding tax on dividends (and similar taxes which might apply on distribution of income), all sales taxes (including taxes on services), apprenticeship tax, business license tax, registration fees, stamp duties and all other taxes/duty/right, as long as the income generated is connected to Petroleum Operations.

A Production Sharing Contract (PSC) providing a stabilization clause to insulate the agreement between Mauritanian State and the Contractor (Petroleum company) from adverse changes to the legal and fiscal environment is usually signed to govern the legal, administrative, tax and customs requirements (rights and obligations) agreed.

Direct taxes

Corporate tax

Contractors are subject to Corporate Income Tax (CIT) on net profits from oil and gas operations in accordance with the actual regime provided by the provisions of the General Tax Code, subject to the specific terms and conditions set forth below.

This tax is established annually separately for each entity party to the contract and for the results of each PSC.

For this purpose, each of these entities shall keep separate accounts for each calendar year. Thus, making it possible to establish a profit and loss account and a balance sheet showing the results obtained from their participation in each PSC and the assets and liabilities allocated to it or directly related to it.

The PSC specifies the rules and bases for the allocation of profits and expenses to be recorded in the income statement.

The tax rate applicable for the entire term of the PSC is also stated in the PSC. It is at least equal to the rate of the domestic law in force on the date the contract was signed.

The CIT return and the annual financial statements shall be submitted by March 31 of each year at the latest.

Oil and gas deductions

The following charges incurred for oil operations, within the limits specified in the PSC, are considered as deductible:

- Cost of supplies, personnel and services;
- General expenses;
- Depreciation of fixed assets;
- Interest and bank charges paid by the contractor in respect of loans contracted from third parties and loans obtained from affiliated companies insofar as such loans, duly approved by the Minister, are

allocated to funding petroleum development operations. The rate of interest paid to affiliated companies shall not exceed the rates usually applied on international financial markets for loans of a similar nature;

- Losses of equipment or property resulting from destruction or damage, bad debts and compensation paid to third parties as damages, unless such damages are caused by the fault or negligence of the contractor;
- Reasonable and justified provisions set up to meet with clearly specified losses or charges which current events make probable;
- The unadjusted number of deficits relating to previous years, within the limit provided for in the General Tax Code.

Royalties

Under the HCC, contractors shall pay annual area fees, calculated on the basis of the area of the contract perimeter on the due date for each payment.

These royalties are neither considered as deductible charges for the establishment of the income tax, nor as recoverable petroleum costs.

The PSC shall specify the rate and basis of the surface royalty for each phase: the exploration period and the exploitation period.

Bonuses

Under the HCC, contractors are liable for a signature bonus on the effective date of the PSC, as well as a production bonus when the quantity of hydrocarbons produced reaches certain thresholds set out in the PSC.

The signature and production bonuses do not constitute a deductible expense for the establishment of the income tax, nor do they constitute recoverable oil costs.

Administrative contribution

Under HCC, contractors are required to pay an annual contribution for the training and development of the Ministry staff, the monitoring of oil operations and the promotion of the oil sector.

The contribution amount and its collection requirements are set by the PSC.

The contribution is deductible for the establishment of the income tax but is not a recoverable petroleum cost.

Capital gains tax (CGT)

The corporate income tax rate is applicable on the capital gains from transfer of shares. The capital gains are equal to the difference between the sale price (arm length price) minus the acquisition value.

Under the General Tax Code, a property income tax is applicable to the sale of exploration permits at a rate of 10%.

The sale of production permits is subject to an immovable property tax at the rate of 10%.

Transfer Pricing

The transfer pricing regulation has been introduced by the financial law #2018-001 dated January 1, 2018.

The regulation globally corresponds to the OECD requirements standards, i.e. identify related party transactions, choose the suitable transfer pricing method and prepare the documentation to support the selection of such method.

It applies to intercompany transactions or transactions with a company located in non-cooperative states or with states with a privileged taxation regime.

The documentation should be readily available upon request from the tax authorities. Otherwise, the tax authorities may set the prices themselves and reassess the tax accordingly.

The financial law #2018-001 of January 1, 2018 has provided new obligations regarding to transfer pricing:

- Transfer pricing annual return: This declaration must be filed along with the financial statements and CIT return, on March 31 of each year, at the latest.
- Country by country report: This declaration must be filed in a dematerialized form, within twelve months following the closing of the fiscal year.

Thin capitalisation

There is a limitation of deductibility for corporate tax purposes.

Under HCC provisions, Interest and bank charges paid by the contractor in respect of loans contracted from third parties and loans obtained from affiliated companies insofar as such loans, must be duly

approved by the Minister and allocated to funding petroleum development operations.

The rate of interest paid to affiliated companies shall not exceed the rates usually applied on international financial markets for loans of a similar nature.

Withholding tax

Under section 87 of the HCC, the contractors are subject to a withholding tax of 7,5% (CIT 4% and PIT3,5%) on services rendered by non-established subcontractors approved to the Simplified Tax Regime (STR). This WHT is collected at the time of the payment and remitted to the Public treasury at least the 15th day of the following month.

Services provided by foreign companies, which are not approved to STR are subject to a WHT of 15%.

Contractors are also subject to 18% WHT on house or office rental and on 2,5% WHT on services rendered by non-commercial entities (previously 3% before the 2020 General Tax Code).

Double Tax Treaties

Mauritania entered into double tax treaties with France, Senegal and the states of the Arab Maghreb Union (Algeria, Libya, Morocco and Tunisia).

Indirect taxes

Value-added tax (VAT)

Contractors shall be subject to value added tax (VAT) under the domestic law, subject to the provisions below:

- Exports of hydrocarbons are subject to VAT at a zero rate;
- Local purchases of goods and services directly related to oil operations are subject to VAT at the zero rate;
- Imports are subject to VAT either at the zero rate for any material or equipment directly necessary for the proper performance of oil operations, or to temporary admission under suspension of VAT for goods admitted to this customs regime;
- Any VAT credit refundable according to the regulations in force and which has encumbered local purchases and imports shall, after verification, be refunded within ninety (90) days following the introduction of the refund application.

Custom duties/Import tariffs

Contractors and their subcontractors' imports shall be subject to the provisions of the Customs Code and its implementing legislation in force. Customs duties are from 0%, 5%, 13%, 20% et 22% depending on the nature of the goods and customs regime and the Statistical Import charge is at 1%.

Imports are subject to the special terms and conditions set out below.

Materials, machinery, equipment, engines and vehicles, spare parts and consumables intended for oil operations and appearing on specific customs lists may be imported either with total exemption from customs duties and taxes, or temporary admission with suspension of customs duties and taxes for those intended to be re-exported after use. Food products and articles for private use are excluded from the specific customs lists.

Other indirect taxes

The petroleum products tax rate is 20%.

Besides, the production and importation of some products are subject to a consumption tax at the following rates:

- Regular gasoline: 5.7 OUGUIYA/L
- Super fuel: 5.8 OUGUIYA/L
- Diesel (gasoil): 3.67 OUGUIYA/L
- Diesel-oil: 3.45 OUGUIYA/L
- Kerosene: 3.086 OUGUIYA/L
- light fuel oil and heavy fuel oil: 0.45 OUGUIYA/L
- Lubricating oils and lubricants: 3.42 OUGUIYA/kg
- Liquefied gaseous hydrocarbons (propane): 3.104 OUGUIYA/kg

Other taxes

The contractor shall be subject in accordance with the conditions of domestic law to the following:

- Housing tax determined by the Municipal Council;
- Tax on motor vehicles, with the exception of off-road vehicles;
- Charges levied by the State, local authorities, public establishments or public services for the use by contractors of roads, various networks and other services, at the rates and under the conditions generally applicable to users of these services.

Personal income tax

Contractors are required to withhold and remit to the public treasury the tax on wages and salaries (PIT) provided for in the General Tax Code at the rates and according to the rules in force.

However, for expatriate staff working in Mauritania, the rate is capped at thirty-five percent (35%).

Social Security

Act no. 67-039 of 3 February 1967, as amended by Act no. 72-145 of July 18th, 1972 and Order 87-296 of November 24th1967, established a Social Security Regime in the Islamic Republic of Mauritania to provide social security for the service of:

- Family benefits (family benefits branch);
- Occupational accidents and professional diseases (professional risks branch);
- Old age, invalidity and death pensions (pensions branch);
- and any other social security benefits which may be established at a later stage for employees.

Social security contributions are withheld monthly by employers and are computed on the basis of gross salary paid up to MRU 7,000. Besides, rates of social security contributions are 1% for employees and 15% for employers.

Social security benefits concern sickness, maternity, retirement, disability, or invalidity.

The rates are the following:

- Industrial Health 2%;
- Industrial Injury 5%;
- Retirement Plans 5%;
- Family Allowances 4%

The withheld amounts must be remitted to Social Security Administration quarterly (the 15 of each April, July, October and January at the latest).

Taxation of Oil Field Service (OFS) Companies

OFS are subject to the domestic law in Mauritania, except if they meet the conditions under section 87 of the HCC. Indeed, according to the HCC provisions, the oil and gas subcontractors shall benefit from a Simplify Tax Regime (STR).

Deemed Profit Taxation

In accordance with the HCC, a deemed profit taxation is applied to an STR approved subcontractor. Its income is taxed at 25% of taxable income applied on a turnover valued at 16%, i.e. 4% of turnover.

Deemed Salary Taxation

In accordance with the HCC a deemed profit salary taxation is applied to an STR approved subcontractor. Income is taxed at 35% of taxable income applied on a turnover valued at 10%, i.e, 3.5% of turnover.

Tax audits

The tax administration has its own agenda to conduct tax audits, but we can confirm that tax audits and tax reassessments are frequent. In practice, an objection letter is transmitted to the tax administration within the statutory deadline and then meetings are scheduled to discuss items that need more clarification.

Local content regulations

A decree- 2018-025 of 8 February 2018 cancelling decree no. 2009-224 of 29 October 2009 repealing and replacing Decree no. 74-092 of 19 April 1974 stating conditions of employment of foreign workers and establishing a Mauritanization plan is applied to companies established in Mauritania.

Power and Utilities Sector

Brief overview of Power and Utilities development in Mauritania

The National Energy Agency (SOMELEC) has been empowered by the government to build many power houses across the country. The government of Mauritania understands that the nation can only achieve full economic growth if the energy sector achieves optimal performance and aligns with the energy needs of its population.

Presently, the country has attained self-sufficiency in the energy sector.

Regulatory Framework

The main regulators of the energy sector are as follows:

- Ministry of Petroleum and Energy;
- National Electricity Agency of Mauritania (SOMELEC);
- Electricity Regulatory Authority (ARSE)

The Electricity Regulatory Authority is an independent body responsible for the regulation of the production, transport, distribution and sale.

Tax regime

The general tax regime applies to participants in the energy sector and the companies in the power sector are subject to the standard tax audit procedures.

Morocco

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Oil and Gas Sector

Brief history on Oil and Gas industry in Morocco

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

As of 31 December 2017, hydrocarbon exploration license was granted on a total area of 170,002.72 Km² and included 22 onshore permits, 77 offshore permits, 2 onshore reconnaissance licenses, 1 offshore reconnaissance license, 9 exploitation concessions and 2 Memorandums of Understanding (MOU) for oil sale.

Morocco aspires to become the new investment hub for oil and gas in the region, benefiting from its geostrategic position at the crossroads of Africa, Europe and the Middle East as well as the several free trade agreements concluded during the past few years.

Significant updates

The 2021 Finance law became effective on 1 January 2021.

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 progressive corporate tax rate scale levied is:

Amount of the net profit in MAD	Rates
Less or equal to 300,000	10%
From 300,001 to 1,000,000	20%
More than 1,000,000	31%

The following rates applied as of January 1st, 2021.

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

Regulatory Framework

In Morocco, the oil & 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

The key regulators in the oil and gas sector include

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

Forms of contracts

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

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

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

Local content regulation in the Oil and Gas Industry

There are no specific regulations provided with regards to the Moroccan local content, in the sense that it is not required for Moroccan individuals or entities to acquire the majority of share capital in oil & gas companies nor to hire a minimum number of Moroccan employees. However, the Hydrocarbon Code provides that, in the petroleum agreement, the state will hold no less than 25% stake in the exploration license and the exploitation concession.

Taxation regime

Direct taxation

The taxable profit is computed as difference between:

- The gross income which is comprised of the value of the proportion relating to the holder of the

exploitation concession in respect of a given fiscal year.

- The expenses, costs and amortisation 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 amortisation (other than nominal assets): the tax loss is carried forward without limitation in time.
- For the operating tax loss, it may be carried forward for 4 years.

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

Moreover, the expenses must be CIT deductible under the normal Moroccan tax law. The following progressive CIT rate scale apply to fiscal years beginning on or after January 1st, 2020:

Amount of the net profit in MAD	Rates
Less or equal to 300,000	10%
From 300,001 to 1,000,000	20%
More than 1,000,000	31%

- The rate of 20% is also applicable to the portion of the taxable profit above MAD 1 million for some companies, such as exporting companies, mining companies, companies carrying out service outsourcing activities inside or outside the industrial integrated platforms devoted to those activities, etc.
- The rate of 31% is reduced to 28% for companies holding an industrial activity with a net profit of less than MAD 100 million.
- Lower CIT rates might apply to some specific activities.
- A higher CIT rate of 37% applies to credit institutions, insurance companies, and Takafoul insurance and reinsurance companies.

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

- The taxable period corresponds to 12 months.
- CIT returns must be filed within three months following the closing of the fiscal year.
- Payment of tax is made during the fiscal year by way of four instalments of 25% each based on the CIT of the previous year. A regularization is undertaken along with the submission of the taxable income return.

Concession royalty

The concession royalty is due on annual basis according to the following rates:

- Onshore and offshore less than 200 meters water depth: Royalties are levied on oil at 10% and gas at 5%. However, for the first 300,000 tons of oil and the first 300 million m3 of gas produced from each exploitation concession are exempt from royalties.
- Offshore beyond 200 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

- Exploration permit: for each exploration permit, a fee of 1,000 MAD is payable at the time of filing a request or applying for an extension period.
- Exploitation concession: for each exploitation concession a rental of 1,000 MAD per Sq. Km. is payable each year.

Consolidation

Moroccan law allows holders and / or co-holders of concessions to consolidate all revenues and expenses of which it holds for the purposes of calculating corporate income tax.

Corporate Income Tax (CIT)

Oil and gas companies holding a hydrocarbon concession are exempt from CIT for a period of 10 years as from the date of regular production of that

concession. Further, newly established entities in Morocco are exempt from the “minimum contribution” for 36 months as from the beginning of the activity.

This minimum contribution is calculated on the amount of turnover, specific financial income and specific non-current income at the rate of 0.5%, 0,6% 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 at least.

Royalties

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

Dividends

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

Double Tax Treaties (DTT)

Morocco currently has more than 50 double tax treaties (DTTs) in force under which the domestic withholding tax rates could be reduced provided all relevant conditions are met. During 2016, 3 DTTs entered into force: Ivory Coast, Mali and Guinea Conakry.

Capital gains realised by non-resident companies:

The MTC provides for exemption of capitals gains realised by non-resident entities on shares in Moroccan entities that are listed on the stock exchange except shares on rich land entities. This exemption is subject to the provisions of the relevant DTTs. The capital gain realised by an oil and gas company in Morocco is included within the taxable basis of the company unless stated otherwise by the DTT.

Capital gains on shares of property rich companies are generally taxable in Morocco under some DTTs.

Thin capitalisation and Transfer Pricing

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

The Finance law 2019 introduced the mandatory filing of TP documentation in the event of Tax Audits. According to the provisions of Article 210 of the MTC, companies having direct or indirect links of dependence with companies located outside Morocco must provide tax authorities with documentation justifying their transfer pricing policy, on the date on which the tax audit begins.

The finance act 2021 has supplemented the provisions relating to transfer pricing documentation by requiring the submission of transfer pricing documentation during a tax audit. This obligation concerns companies that carry out transactions with foreign affiliates which meet the following conditions:

Their turnover higher or equal to 50 million dirhams. The value of their gross assets equals or exceeds MAD 50 million dirhams.

The said documentation includes:

A master file containing information relating to all the activities of the related enterprises, the transfer pricing policy applied and the distribution of profits and activities on a global scale and

A local file containing information specific to the transactions that the audited enterprise carries out with non-arm's length enterprises.

The 2021 finance law has also introduced a fine applicable to taxpayers who do not comply with this obligation. The fine is 0.5% of the amount of the audited transactions without being lower than 200,000 MAD per year.

The terms and conditions for the application of these measures will be determined by a decree.

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

are respected:

- The share capital must be entirely paid-up;
- Deductible interest is computed on an amount not exceeding the amount of share capital; and
- Interest must be computed on the basis of rates provided by the Ministry of Finance.
- For 2019, the applicable rate is 2.19%.

Indirect Tax

Value-added tax (VAT)

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

All taxpayers making taxable supplies will need to register and account for VAT. Based on the level of turnover/taxable supply made, VAT returns are required to be prepared and filed either monthly or quarterly.

The VAT filing should be done electronically. The payment deadline is the end of each month or the end of the first month of each quarter.

Custom duties

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

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

Furniture and other personal items belonging to the personnel recruited aboard are released for consumption without payment of customs duties. The materials and items having benefited from the above exemptions cannot be used except for utilisation they were imported for. The holders of hydrocarbons reconnaissance, exploration or concession may be subject to audit by the customs administration.

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

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

Consumption tax on energy products and bitumen

Unless they are expressly exempted, the energy products and bitumen are subject to the consumption tax. In this context, crude oil and crude bituminous minerals imported are exempt from import duty and consumption taxes.

As far as the Moroccan production is concerned, crude oil or crude bituminous minerals obtained locally are exempt from the domestic consumption tax and are no longer subject to sampling by customs. On the other hand, the natural gas extracted from the Moroccan subsoil, is subject to consumption tax in addition to the VAT calculated on the amount of the said consumption tax.

Other Taxes

Social solidarity contribution

A social solidarity contribution (SSC) was introduced by the Finance Act 2021. It is applicable for the year 2021 and it concerns:

Companies excluding companies permanently exempt, companies operating in industrial acceleration zones, and companies with CFC status

Individuals earning professional income

Individuals earning taxable agricultural income

Individuals earning salary income

Individuals earning rental income

Concerning individuals, the contribution is calculated on annual Moroccan sourced income after tax which is equal to or greater than MAD 240,000. The applicable rate is 1.5%.

Business tax

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

Employment income tax

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

Furthermore, if the Morocco resident employees receive both Moroccan and foreign source revenues, they will have to submit via e-filing platform their personal individual tax return to the tax administration before the 1st March of the following year

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

Social security contributions

The only mandatory social security regime in Morocco is managed by the Moroccan Social Security Fund "C.N.S.S" as regulated through the Dahir enacting the Law No. 1-72-184.

Except some exemption cases, all employers must affiliate their employees before the National Social Security. It is worth noticing that the social security contribution is apportioned between the employer and the employee.

Employer Contribution	Rates (%)
Family allowances	6.4
Short-term & long-term benefits contribution payable on earning up to MAD 6,000 per month	8.98
Mandatory medical insurance	4.11
Professional training	1.6

Employee Contribution	Rates (%)
Short-term & long term benefits contributions payable on earnings up to MAD 6,000 per month	4.48
Mandatory medical insurance	2.26

Property taxes

Property tax is levied on the transfer of property at the rate of 1.5% of the value of the property.

Registration taxes

Registration is a formality that the law provides for some acts and conventions. The applicable rates are 1%, 1.5%, 3%, 4%, 5% and 6%. They vary depending on the nature of the operation with a minimum charge of 100 MAD. This minimum charge is increased to 1000 MAD for the acts of incorporation and capital increase of companies.

Please note that the MTC provides for an exemption of registration duty on incorporations and transfer of share.

Companies Income Tax (CIT)

Article 6-II-B-2° of the MTC grants the 10 years exemption to Hydrocarbon Concession holders.

OFS companies do not fall within the scope of this exemption. As such, OFS companies would be subject to CIT under the common law conditions.

Value Added Tax (VAT)

Being contractors of the reconnaissance license holders, OFS companies should enjoy the VAT exemption subject to some formalities.

Oil and gas field services companies (OFS)

Companies supplying oil and gas services are not subject to the same tax regime in Morocco as exploration and production companies. Instead they will be subject to the general tax law of Morocco and will suffer tax on profits at the proportional rate scale from 0% to 31% as provided above.

Deemed Profit Taxation

Non-resident companies tenderers of work, construction or assembly contracts may opt for the flat-rate taxation at the rate of 8% levied on the gross value of the work contract.

Compliance Requirements

The MTC does not provide any specific tax rules for hydrocarbon activities. Oil and gas companies

established in Morocco are required to comply with all formal obligations to which a Moroccan company is subject. Oil companies must also maintain bookkeeping and records according to the Moroccan accounting principles (Moroccan GAAP).

Tax Audits

The tax authorities may carry out an inspection whenever necessary. Although the statute of limitations period is 4 years, it may be extended to 8 years in case of tax losses. However, the company/branch documents must be kept for ten years.

Power and Utilities Sector

Brief overview of Power and Utilities development in Morocco

The Ministry of Energy, Mines and Sustainable Development is responsible for power and utilities in Morocco. A number of developments have taken place in the power and utilities sector since Morocco's independence, especially in Electricity and Mines. Morocco continues to develop Wind and Solar Energies in the Northern and Southern of Morocco, notably Noor Projects. Morocco aims to supply most of its energy needs though Renewable Energy complexes.

The Moroccan solar program "NOOR" is part of the energy strategy established according to the High Souverain's instructions. This program will be implemented by the construction of solar power plants NOOR Ouarzazate (510 MW CSP and 70 PV), NOOR Tafilalt and Atlas (300 MW PV), NOOR Midelt (300 MW CSP and 300 MW PV), NOOR Laayoune and Boujdour (100 MW PV), NOOR Tata (300 MW and 300 MW in CSP PV) and solar power plants in the economic zones (150 MW PV)[1]. In January 2020, the Ministry of Energy, Mines and Environment (MEME) and MASEN (the main actor in the implementation of Morocco's strategy relating to renewable energies) introduced the programme of capacity allocation in qualified sites and pre-equipped by MASEN for the development of photovoltaic projects with a total capacity of about 400 MW. That was in order to encourage the implementation of solar projects by private operators.

This programme constitutes the first phase of NOOR PV II.

Fiscal regime

The Moroccan Tax Code does not provide for specific tax regime for entities in Power & Utilities. Income derived from power and utilities activities in Morocco is subject to the standard progressive rates detailed above.

Tax Compliance

Income Tax compliance requirements for entities subject to Corporate Income Tax (CIT) in Morocco are:

- Payment of provisional CIT: payment of tax is made during the fiscal year by way of four instalments of 25% each based on the CIT of the previous year. A regularization is

undertaken along with the submission of the annual income return

- Submission of annual tax returns with 3 months as of the closing date.

Withholding taxes

- Same provisions provided for Oil & Gas Sector.

Thin Capitalization

- Same provisions provided for Oil & Gas Sector.

Transfer pricing

- Same provisions provided for Oil & Gas Sector.

Value Added Tax

Same general rules outlined above for Oil & Gas Sector remain applicable for Power and utilities. However, specific VAT rates are applicable either locally or on importation to Energy products:

- Electric energy: 14%

Mozambique

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Oil and Gas Sector

Brief history on Oil & Gas development in Mozambique

Mozambique is situated in the Southern Africa area, comprising of 11 provinces, and has Maputo as its capital. The official language is Portuguese, and their currency is Metical (MZN).

Currently, Mozambique has one of the major sedimentary basins in Africa, which is currently being explored. It has also been proven that the country has natural gas at two sedimentary basins that can be explored.

The country updated its terms of legislation after the recent discovery of enormous natural gas reserves by Anadarko and ENI in the Oil & Gas Rovuma Basin off the northern coast of Mozambique. The natural gas will provide the feedstock for the Liquefied Natural Gas (LNG) facility and associated infrastructure in the Palma region.

The Petroleum Law no. 21/2014 of 18 August governs all aspects related to petroleum operations; including the infrastructure (owned or held by a holder of petroleum right or a third party) used in connection with petroleum operations (it therefore typically includes the LNG activities as well). It also applies to oil & gas consumption used in connection with production operations or transport.

The refining, operations, industrial, distribution and marketing of petroleum products are expressly excluded from the Petroleum Law, as these activities are governed by a specific Decree no. 2/2014 of 2 December, which established the Legal and Contractual Special Regime applicable to the 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 Petroleum Law includes provisions, which establish a more equitable profit sharing fiscal structure with international extractive companies strengthens the governance arrangements supporting these sectors, clarifies the public and private sector's role in exploiting and managing these resources and explores options to support local content (LC) development.

Regulation on petroleum operations is currently under discussions and expected to be approved soon.

Significant new developments

The Rovuma Basin has secured the following three key Liquified Natural Gas ("LNG") projects that will determine the country's future as a gas economy and global player:

- Area 4: Coral FLNG (Eni), first gas expected in 2022

  The start-up on the ENI operated Coral FLNG project was pushed back after constant delays to the Final Investment Decision ("FID"), which was eventually reached in June 2017. Start-up of the 3.4 mtpa project is now expected in 2022. Eni has secured offtake agreements for all 3.4 mtpa with BP.

- Area 1: Mozambique LNG (Anadarko, but subsequently taken over by Total), first gas expected in 2024

  An Anadarko-led consortium has secured over 11.8 mtpa of LNG offtake agreements, paving the way for the partners to have reached FID as scheduled in 2019. The planned liquefaction and export terminal will include two liquefaction trains with a total capacity of 12.88 mtpa. According to IMF predictions, the processing facilities should cost about US$7bn, with a total project cost reaching around USD$25bn.

- Area 4: Rovuma LNG (ExxonMobil), first gas expected 2025

  Eni and ExxonMobil expect to sanction their onshore Rovuma LNG terminal in 2019. Start-up of production in 2025 should see Mozambique's natural gas output increased to over 30 mtpa. The Rovuma LNG project aims to monetise the vast gas resources of offshore Area 4, including the large Mamba gas field. ExxonMobil is leading operations related to the LNG facilities, while Eni is heading the development of the upstream. The planned liquefaction and export terminal will include two 7.6 mtpa liquefaction trains for a total LNG production capacity of 15.2 mtpa. An announcement was made in late December 2018 that sufficient offtake commitments had been signed with the partners' affiliated buyer entities, which is a key milestone towards FID. Total project costs are estimated to be around US$27bn. FID is yet to be completed.

The two major political forces in Mozambique are the Front for the Liberation of Mozambique (Frelimo) and the Mozambican National Resistance (Renamo), followed by the Mozambique Democratic Movement (MDM).

Presidential, legislative and provincial elections also took place on 15 October 2019. For the first time, provincial governors were elected, effectively ending their appointment by executive decrees. Frelimo increased its vote share in the presidential contest to record a landslide 73%. It won every single province and extended its majority in the National Assembly to more than the two-thirds needed to change the constitution. However, despite Frelimo winning the elections by a landslide, opposition parties performed quite well, especially in provincial and legislative elections. The 2018 municipal elections confirmed ruling Frelimo dominance, however Renamo gained ground, winning eight municipalities out of 58 country wide, the most it has ever held.

Due to these developments over the last couple of years, Mozambique's currency, the Metical, has weakened substantially against the dollar, with minimal growth registered in the year 2017. Given this pressure on the economy, tax collections by the Tax Authorities decreased and naturally, the Authorities are more focused on large transactions where capital gains or related taxes are due and payable and are also aggressive with tax inspections/audits. Usually, these types of transactions are in the extractive industry.

There has been an extension, until December 2023, on the VAT exemption applicable on the sale of goods and provision of services, set out briefly below:

- sale of sugar;
- sale of raw materials, intermediary products, equipment and components carried out by the National Sugar Industry;
- the sale of cooking oils and soaps,
- the sale of goods resulting from the industrial production of cooking oil and soaps carried out by the respective factories;
- the sale of goods to be used as raw materials in the oils and soaps industries set out in the Customs Tarrif Schedule; and
- sale of goods & provision of services in the ambit of the agricultural production of sugar cane activity and destined to the industry

Fiscal regime

In Mozambique, petroleum operations are defined as "all or some of the operations related with the research, development, production, separation and treatment, storage, transport, sale or delivery of oil as agreed by the parties, including the operations of processing natural gas and ending of all concluding operations."

Petroleum operations are governed by the following legislation:

- Law no. 21/2014, of 18 August (Petroleum Law);
- Regulations on Petroleum Operations, approved by Decree no. 34/2015, of 31 December (PO Regulations);
- Law no. 27/2014, of 23 September (Specific Rules on Taxation and Tax Benefits of Petroleum Operations) with the amendments introduced by Law no. 14/2017, of 28 December.
- Decree-Law no. 2/2014 of 2 December, provides a special legal and contractual framework for which the Liquefied Natural Gas Project in Offshore Areas 1 and 4 in the Rovuma Basin.

In addition, the Government approved the following regulations:

- Decree no. 32/2015 of 31 December the Regulation of the Specific Tax Regime and Fiscal Benefit of Petroleum Operations;
- Decree no. 74/2016 which approves the complementary terms of the EPCC (Concession contract) in Area 1 of the Rovuma Basin;
- Decree no. 75/2016 which approves the terms of the alterations of the EPCC (Concession contract) in Area 4 of the Rovuma Basin;
- Decree 76/2016 concerning the option under the law 27/2014 of September 23, not to receive in kind the Liquefied Natural Gas corresponding to the Production Tax, committing it to the joint sale by the concessionaire;
- Decree no. 77/2016 approves the terms and conditions of the Liquefied Natural Gas Agreement with the Government for Area 1;
- Decree no. 78/2016 which approves the terms of the sale of shares in the Liquefied Natural Gas Project for Area 1 within the Concessionaires.
- Decree no. 37/2017 which approves the terms and conditions of the Concession Contract of the LNG Maritime terminal in Ponta Afugi, Tungue's Bay, Palma's District, Cabo Delgado's Province.

In brief, the Law no.14/2017 of 28 December, introduced the following amendments to the specific tax regime for oil & gas:

Capital Gains: Capital Gains arising from the onerous or gratuitous alienation, whether direct or indirect, of petroleum rights situated in Mozambique are considered as capital gains. Capital gains are taxed in full (32% rate) and the liability for payment is jointly and severally liable between seller, purchaser and holder of petroleum right and the respective tax must be paid within 30 days from date of alienation;

Stability clause: It is possible to negotiate a tax stability for a period of 10 years, effective upon a proven investment of USD 100.000.000,00 (one hundred million US dollars)

USD Accounts: It is possible to adopt USD Dollars as the currency to present the company's accounts, subject to prior authorization from the Minister of Finance. Once USD Dollars is adopted as the reporting currency, it cannot be altered. Only companies with an investment equal to or greater than the equivalent of USD 500.000.000,00 is made and that more than 90% of its transactions in dollars are eligible to make this application.

Audited Accounts: Companies are obliged to have the accounts certified by an independent auditor.
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 & gas sector and ensures a greater competitiveness in the sector.

The ring-fencing rules can be summarized as follows:

- An entity that has more than one concession must assess the taxable income of each concession separately, as if each was an independent taxpayer;
- Oil & Gas companies are now required to organise their statutory accounts and comply with tax and accounting obligations separately per concession;
- Oil & Gas companies are required to have different tax registration numbers per concession; and
- Offset of losses assessed in one concession with gains assessed in another is not allowed.

Petroleum Production Tax paid is no longer deductible for Corporate Tax purposes.

Regulatory Framework

The key regulators in the oil & gas industry include:

- Ministry of Energy and Mineral Resource (MIREME): This ministry regulate the activities of companies operating the energy, oil & gas sector.
- National Institute of Petroleum (INP): This Institute is subordinate to MIREME and is responsible for the negotiation of the petroleum concession contracts on behalf of the government.
- National Hydrocarbons Company (ENH) is the entity that manages and holds the participating interests on behalf of the State.

Forms of contract

In accordance with the Petroleum Law, petroleum operations should be carried out through a concession contract following a public tender, which is launched by the Government for the activities of exploration, production and exploration of oil & gas.

The petroleum operations are subject to the prior execution of a concession contract under the Petroleum Law which will grant the following rights:

- Reconnaissance – the reconnaissance concession contract grants the non-exclusive right to carry out preliminary exploration work and assessment operations in the concession contract area;
- Exploration and production – an exploration and production concession contract grants an exclusive right to carry out petroleum exploration and production as well as a non-exclusive right to construct and operate oil pipelines or gas pipeline 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 pipeline 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:

Joint Venture Arrangement

This is usually an arrangement between ENH on behalf of the Government of Mozambique and oil companies. Companies operating under this arrangement jointly own and develop various oil & gas concessions, contribute towards costs and subsequently derive benefits based on their equity participation in an oil block.

The parties will typically sign a Joint Operating Agreement (JOA) to govern relations between them.

Exploration and Production Contract (EPC)

This type of agreement is basically an agreement between an Oil & gas Company and the Government. The Government grants to the contractor a determined area for research, exploration or production on the contractor's own risk and costs.

The contractors provide the funds and bear the risks until commercial production is achieved. Production is allocated in barrels to royalty, then taxes, then costs and finally profit using a predetermined sharing formula. An EPC contains the exclusive right to conduct petroleum exploration and production activities, as well as the non-exclusive right to construct and operate an oil or gas pipeline for the purposes of transporting oil or gas produced from the contract area, except where access to an existing oil or gas pipeline system is available on reasonable commercial terms.

The power to approve the execution of the EPC, development plans and any material amendments thereto is vested in the Council of Ministers. Petroleum Concession Agreement was updated in mid-June 2016.

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 the PPT by means of notice by the tax administration, after consultation with the relevant services of the Ministry responsible for the petroleum sector.

The tax base of the PPT shall be the value of the petroleum produced, which shall be determined based on the weighted average prices at which it was sold by the producer and its contractors in the month to which the tax to be assessed pertains.

Local Content rules

Mozambique recently introduced some local content rules for the industry, some of which are:

I. Mozambican companies or foreign entities associated with Mozambican citizens or companies, have right of preference in the

attribution of concession agreements;

I. Foreign citizens or entities providing services to the oil operations must associate with Mozambican citizens or companies;

II. Holders of the rights to conduct oil operations must give preference to local products and services, when same are comparable in quality, to the international products, materials and services that are available within the required deadline and quantities, and when the price, including taxes, is not superior in more than 10% (ten per cent) comparing to the price of the available imported goods;

III. The Concessionaires must contribute to the training of local technicians in accordance with the provisions of the respective concession agreement with the Mozambican Government;

IV. Acquisition of goods and services within the oil operations in an amount equal or superior to MZN 40,000,000.00 must be made through public tender;

V. Concessionaires and the Specific Purpose Entities must prepare and submit to the competent Governmental entities, every year, a training plan aimed at a gradual increase of the percentage of Mozambican citizens working in any project of the Rovuma Basin, at all levels of organisation. This must include an effective training plan of Mozambican workers, either in Mozambique or abroad, for each phase and level of the operations.

Taxation Regime

Direct Taxes

Profits and Gains

Furthermore, without prejudice to the IRPC, in terms of the Petroleum Tax Regime, the following are considered profits and gains derived from petroleum operations:

- Revenues from the sale or disposition of the produced oil;
- Compensations received for any loss or destruction of the produced oil, resulting from an insurance contract or other source;
- Amounts received from a sale of information regarding the petroleum operations;
- Capital gains resulting from the sale, directly or indirectly, of real estate assets, located in Mozambique, related to oil & gas operations, regardless of whether the disposition occurs abroad;
- Unused amounts of the fund related to the costs for the demobilization of oil & gas operations;
- Any other withdrawals related to Demobilization Fund of oil & gas operations; and
- Any other amounts obtained by virtue of oil & gas operations in respect of the concession
- contract.

Costs and Losses

In terms of the Petroleum Tax Regime, the following, amongst others are considered costs and losses derived from petroleum operations:

- Operating costs;
- Overhead such as warehouses, vehicles, offices, camps, installations, equipment, used in the petroleum operations.
- Professional training of Mozambican employees;
- Expenses incurred in the signing of a concession contract, excluding any bonus associated with this acquisition;
- Contributions in cash to the Demobilization Fund and direct costs of demobilization;
- Expenses of any downstream activity of the concession contract or services provided under an activity related to the referred contract; and
- General administrative expenses.

The enacted law also provides for non-deductible expenses, which include:

- Fraudulent activities;
- Hedging losses;
- Expatriate personnel training expenses and training programs not in compliance with the legislation;
- 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;
- Damages caused by negligence or fraud; and

- Capital Gains deriving from the sale or not of shares in the petroleum sector.

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 amortization.

Furthermore, the development and production costs carried out under a concession agreement are considered as depreciable items of tangible assets and are consequently subject to amortization.

Please see the table below with the amortization rates:

Assets	Rates
Prospecting and Exploration Cost	100%
Development costs	25%
Petroleum Production Assets	20%
Acquisition of Petroleum rights	10%
Other Assets	10%

The amortization is deducted with the above rates unless the working life of the petroleum operation approved in the development plan is reduced, in which case the rate shall be divided by the number of expected years of oil & gas operations.

Withholding tax

Withholding tax is an advance payment of income taxes. It is deductible from payments made on qualifying transactions which include payments in respect of services, rents, dividends, interests, royalties and commissions. Note however that payments for services between local entities subject to Corporate Tax are exempted from withholding tax.

Payments to non-residents without permanent establishment are taxed through a final withholding tax of 20% on the income listed on the specific legislation.

The rate of 20% is reduced to 10% in cases where Concessionaires in oil & gas sector acquire the services from non-resident entities provided such services relate to Concession Contract.

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

- Telecommunication services and international transport services, including assembly and installation of the equipment made by such service providers;
- Construction and rehabilitation of infrastructure of production, transport and distribution of electricity in rural areas, within the scope of public rural electrification projects;
- Chartering of seafaring vessels for fishing and cabotage activities; and
- Securities listed on the Mozambican Stock Exchange.

By the 20th day of the following month, all amounts withheld must be delivered by the company to the tax authorities.

However, if payments of income subject to withholding is to be made to foreign entities, proof of payment of the tax must be presented to the commercial bank or central bank (where applicable) before the transfer is processed or approved. Therefore, in these cases, the withholding tax must be paid to the State before the transfer is made. However, the applicable withholding tax rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Mozambique. Mozambique, currently, has in force Double Taxation Treats (DTTs) with some African, European and Asian countries namely: Portugal, Italy, Mauritius, United Arab Emirates (UAE), Macau, South Africa, Botswana, India and Vietnam.

Capital gains tax

In Mozambique, capital gains are not taxed separately from other company's incomes, they must be added to the remaining company's income and taxed at the end of the year based on the Corporate Income Tax rate (e.g. 32%). The following changes were introduced to the CIRPC regarding capital gains, with effect from 2013:

- Capital Gains derived from direct or indirect transfer of shares, participating interests and other rights involving assets located in Mozambique and between non-resident entities, are regarded as obtained in the country; and

- The direct and/or indirect disposal of Mozambican companies by non-residents are subject to tax at a rate of 32% in Mozambique (certain reliefs may be available depending on the nature of the asset sold (i.e. direct participative interest sale or share sale).

The compliance requirements will include obtaining the necessary approvals for the sale from the competent authorities and disclosing the gain in the tax return. For gains by non-resident entities, the compliance requirements will depend on the structure of the sale, but approval must be obtained, and the non-resident will likely be required to register for tax, pay over the tax in Mozambique and then deregister.

Transfer pricing

On the 12th of September 2017, the Council of Ministers approved Decree no 70/2017 of 6 December ("the TP Decree"), which regulates the Transfer Pricing Regime ("the TP Regime") in Mozambique.

With effect from 1 January 2018, the TP Decree introduced the rules and procedures to be observed by taxpayers whenever they carry out transactions with related parties, regardless of whether such related parties are residents or non-residents in Mozambique.

By enacting rules on Transfer Pricing ("TP"), the intention is to neutralise certain base erosion and profit-sharing practices observed. The TP Regime aims to protect the domestic tax base and increase tax revenues as well as to establish equal tax treatment between entities integrated in groups and independent companies under the same situation.

With the approval of the TP Regime, all taxpayers who carry out transactions with related parties, will need to ensure at the end of the 2018 financial year that all transactions carried out with such parties are supported and comply with the TP Regime in order to avoid the disregarding of such costs by the Mozambique Revenue Authorities.

Pursuant to the Corporate Income Tax Code ("CIRPC"), the TP Regime applies to:

- Corporate Income Tax ("IRPC") and Personal Income Taxpayers ("IRPS") resident in Mozambique carrying out transactions with resident or non-resident related parties;
- Permanent Establishments ("PE") carrying out related party transactions with non-resident related entities;
- PE's located on Mozambican territory carrying out transactions with other PE's of the same entity located outside Mozambique;
- A resident or non-resident entity with a PE located in Mozambique that carries out related-party transactions with an entity subject to a clearly more favourable tax regime, under the terms of the CIRPC; and
- Transactions carried out by the taxpayer domiciled in Mozambique, through an intermediary party not characterized as a related party, operating with another entity abroad, characterized as a related party to the Mozambican taxpayer.

For purposes of establishing TP, a party is related to an entity in the current context, if directly or indirectly, through one or more intermediaries, the party:

- controls, or is controlled by, or is under the common control of the entity.
- has an interest in the entity that has a significant influence over it; or
- has a joint control over the entity.

According to the TP Decree, whenever there are transactions carried out by taxpayers and any other entity with which they are in a special relationship, the relevant parties must agree and apply substantially identical terms and conditions to those that would normally be agreed, accepted and applied between independent entities in comparable circumstances (i.e. the arm´s length principle)

When the terms and conditions of a related transaction differ from those which would normally be agreed upon, accepted or practiced between independent entities in comparable circumstances, the Tax Authorities may undertake the respective adjustments to the taxable profit which are deemed necessary in order for the amount thereof to correspond to the one that would have been earned in the absence of special relationships.

The key objective of the arm's length principle is to compare prices applied on intra-group transactions to the prices applied on similar transactions between independent/unrelated parties.

Therefore, the taxpayer must ensure that when setting prices in intra-group transactions, such prices correspond to the arm's length principle (i.e. the market price).

Principle of Independent Entities

With regards to the IRPC, the following operations are considered to be conducted by independent entities applying the transfer pricing rules provided by the IRPC:

- Transactions relating to different concession contracts of the same taxpayer;
- Transactions relating to a concession contract and other activities of the same taxpayer;
- Transactions relating to oil & 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 & gas within the same concession agreement, each taxpayer must separately calculate the taxable income of the petroleum operations in respect of that concession contract as if they are associated entities conducting intergroup transactions by applying transfer pricing principles (i.e. principle of independent entities.)

Thin capitalisation

A debt to equity safe harbour ratio of 2:1 applies in Mozambique. Any interest incurred on the portion of the loan deemed excessive will not be tax deductible for corporate tax purposes. However, for specific O&G operators (e.g. under the specific LNG Decree-Law for Rovuma Basin) this ratio is not applicable.

Indirect Taxes

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.

As from 1 January 2017, the new VAT Law revoked the exemption granted to Oil & Gas companies for the acquisition of services related to drilling, research and construction of infrastructures during the prospecting and research phase. The reason why this exemption was revoked is unclear.

VAT payment is required monthly. The payment is accompanied by three copies of the form called Declaração Periódica de IVA – Modelo A. The VAT returns should be submitted on a monthly basis, by the end of the following month. The new VAT Law introduced an additional requirement for submission for periodic declarations when the result for the month is a credit in favour of the taxpayer. If so, the VAT return should be submitted to the relevant tax office by the 15th day of the following month.

In addition, all periodic declarations must be submitted with an indication of the first and last order number of the series of invoices issued or other equivalent documents. Please bear in mind that the submission of the Modelo A outside the statutory period is subject to payment of fines and interests (if there is a VAT amount to pay) to the Tax Authority. The submission of the VAT form currently is done by submitting the original forms, since there is no electronic form application currently used by the Tax Authorities.

Custom duties/Import tariffs

Custom duties in Mozambique are levied only on imports. Rates vary for different items, typically from 0% to 20%, and are assessed with reference to the prevailing Harmonized Custom Tariff. The fiscal benefits available for the petroleum operations are the following:

a) Exemption from customs duties, VAT (17%) and excise duties on import of capital equipment, listed in Class “K” of the Customs Tariff Schedule, during a period of 5 years counting from the commencement of activity’s date.

b) In addition to those listed in the Class “K” of the customs tariff schedule, the exemptions from customs duties, VAT and excise duties also apply on importation of specified goods/equipment used for exploration purposes.

Other taxes

Employment tax

All remunerations paid to employees are subject to monthly withholding as per the definitive tax rates that are established in a specific schedule approved by law, depending on the gross amounts received and personal and family specific circumstances. The employer is obligated to withhold at source the tax due by the employees.

For resident employees, the monthly withholding rates vary from 0% to 32%, being withheld definitively at source. For non-resident employees, the withholding rates above is reduced to 20%. However, the Expatriate Personnel of the Concessionaire (O&G) and its Subcontractors (OFS) shall be exempt under the EPC

(older versions) from any and all taxes on or related to the income of non-resident Expatriate Personnel of the Concessionaire or its Subcontractors or any other tax of a similar nature imposed on the work earnings of such Expatriate Personnel. The amounts withheld by the company shall be delivered to the tax authorities by the 20th day of the following month.

Social security contributions

Pension contribution companies must be registered with the national social security system. In order to register the company (as a contribution payer) with the National Social Security System, a proper form must be completed, and a letter must be submitted to such Authorities. Social Security is payable by employers and employees on their monthly remuneration. The aggregate rate of contribution is 7%, 4% and 3% payable by employers and employees, respectively. These amounts must be delivered to the Social Security authorities by the 10th day of the following month.

There is no difference between the normal regime and that of O&G companies. However, as stated above, the Expatriate Personnel of the Concessionaire (O&G) and its Subcontractors (OFS) shall be exempt under the EPC from any and all taxes on or related to the income of non-resident Expatriate Personnel of the Concessionaire or its Subcontractors or any other tax of a similar nature imposed on the work earnings of such Expatriate Personnel. This exemption is present in the old Concession Agreements but is being removed from the latest versions of the concession agreements.

Municipal Individual Tax

Municipal Individual Tax (IPA) is a fixed value payable annually by all resident individuals aged between 18 and 60. The tax is payable once a year. This tax replaces the National Reconstruction tax within the Municipalities. It is levied on the salary of the employees. Currently the IPA for the FY18 in Maputo amounts to MZM 295.00. This tax is payable in March of each financial year and must be withheld from the employees' salary during March.

Municipal Property Transfer Tax

Municipal Property Transfer Tax (SISA) is charged on the onerous transmission of property rights or other minor rights over immovable property (e.g. sale and purchase, accord and satisfaction, constitution of servitudes, etc.) considered as urban tenements located in the Mozambican territory.

A property is considered urban tenement if the source of income from the property is derived from any building on the land, with the grounds on which it is based, and not the land itself.

The obligation to pay the property transfer tax is triggered the moment that the onerous transmission of a property right or a minor right as referred above is considered transfered (including as referred above, the signature of promise of sale agreements). The rate of tax is 2% of the selling price of the building. When the beneficiaries live in a country with a privileged tax regime, the applicable rate is 10%.

Municipal Tax on Real Estate

This tax is levied on buildings situated within a municipality. The rates applicable are 0.4% for buildings used for habitation purposes and 0.7% for buildings used for commercial purposes. This tax is paid in two instalments, being the 1st in January and 2nd instalment in June, it can be paid in one instalment until 31 January. Currently, the value of immovable property is determined on the grounds of a formula established by the State Department for Sale of State Real Estate.

Stamp taxes

Under the Stamp Duty Code, stamp duty is payable on any agreement, bank transactions, and specific acts foreseen in the said Code and executed in Mozambique. The payment of the stamp tax is due by the 20th day of the following month of first execution of the agreement or other act. Stamp duty is chargeable at either fixed rates or ad valorem (i.e. in proportion to the value of the consideration) depending on the class of instrument.

Taxation of Oil Field Service Companies (OFS)

The OFS are subject to the normal tax regime as a normal business operator and are not entitled to the specific tax regime applicable to the Exploration and Production Companies.

Corporate Income Tax:

32% (although a penalty rate of 35% may be charged on unsubstantiated payments). Resident entities are taxed on worldwide income. Branch tax rate is also 32%. There is no branch remittance tax.

Dividends:

20% final tax (10% for shares listed on the Maputo stock exchange) unless treaty relief applies.

Non-Resident Services WHT:

20% for non-resident entity with no head office, or effective management or control in Mozambique (this is applicable to payments made by OFS to its non-resident service providers. The rate is reduced to 10% when it is the Concessionaire making the payment to a non-resident OFS.

Value Added Tax

VAT is chargeable on the supply of goods and services in Mozambique carried out in the national territory by a taxpayer acting as such, and on imports. The VAT rate is 17%. It is deductible and can be offset from output VAT. It can also be carried forward or reimbursed.

Incentives in the oil & gas industry

The fiscal benefits available for the petroleum operations are the following:

- Exemption from customs duties, VAT (17%) and excise duties on import of capital equipment, listed in Class "K" of the Customs Tariff Schedule, during a period of 5 years counting from the commencement of activity's date.
- In addition to those listed in the Class "K" of the customs tariff schedule, the exemptions from customs duties, VAT and excise duties also apply on importation of specified goods/equipment used for exploration purposes.

The above benefit shall only be granted whenever the goods to be imported are not made in Mozambique or, if so, such goods do not satisfy the specific features in terms of purpose and functionality required by or inherent in the nature of the activity to be developed and exploited.

Whenever the tax benefit refers to the acquisition of goods intended for the direct realization of the purposes of the acquirers, it will be rendered void in case of sale of such goods, or should they be used for a purpose other than the intended purpose, without the prior authorization of the competent entity; in which case the sanctions provided for in the applicable legislation will be applied.

Compliance Requirements

It is established that the taxpayer must obtain a Number of Individual Tax Identification (NUIT) for each area of the concession contract and organise a separate accounting for each area of the referred contract.

Tax returns and payments

The Tax Code establishes the following deadlines for payment of this tax. Two types of provisional payments of income tax: advance and special advance payments:

Advance

3 equal monthly instalments in May, July and September (or 5th, 7th and 9th if not December year-end) of the tax year to which the tax relates. Total amount = 80% of tax assessed in preceding year, less the amount of tax withheld by third parties in the previous year.

Special advance

3 equal monthly instalments in June, August and October (or 6th, 8th and 10th if not December year-end). They equal the difference between 0.5% of the company's turnover and the total of advance payments made in the preceding tax year. Minimum amounts = MT 30,000, maximum amounts = MT 100,000.

Final payment

The annual corporate tax return must be lodged and any final payment made by 31 May each year (or 5th month after year end), with all supporting documents to be lodged by 30 June, or 6th month after year end (see below for more details).

Other declarative obligations

Corporate taxpayers should also comply, amongst others, with the following declarative obligations:

Declarative Obligations	Deadline
Annual Income Tax Return (M/22)	By the last working day of May or by the last working day of the fifth month subsequent to the end of the tax period for the taxpayers authorized to adopt a different tax year
Annual Declarations of Accounting and Tax information (M/20) and supporting documents	By the last working day of June or by the last working day of the sixth month subsequent to the end of the tax period for the taxpayers authorized to adopt a different tax year
Annual Communication on the Income Paid to Non-Resident Entities (M/20-I)	By the last working day of June
Annual Communication of commencement of activities (M/02)	Fifteen days before start of activities
Declaration of alterations (M/02)	Fifteen days after occurrence of alteration
Declaration of termination of activities (M/03)	Thirty days after termination
Declaration of substitution (applicable when tax assessed is less than tax due, or tax losses declared are higher than effective losses) (M/22)	No legal deadline foreseen by law. However, it is recommended that such declaration be submitted together with the Annual Declaration of Accounting and Tax Information (M/20)

Every company engaged in petroleum operations is required to have separate file returns for each concession and individual tax returns.

Petroleum Production Tax

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

Petroleum Production Tax should be paid monthly to the tax authorities by the end of the month following the month of production, and the respective return should be filed jointly with the following information:

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

Penalty

Late submission of returns: fine that varies from MZN 3.000 to MZN 65.000.

Late payment: fine that can be up to the double amount of tax due, plus daily interest calculated based on the MAIBOR rate + 2%

Tax audits

The statute of limitation in Mozambique is 5 years. Normally the Authorities perform audits in case of reimbursement applications or before the 5-year period expires.

Power and Utilities Sector

Brief overview of Power and Utilities development in Mozambique

At 187 gigawatts, Mozambique has the largest power generation potential in Southern Africa from untapped coal, hydro, gas, wind and solar resources. Hydropower currently accounts about 81% of installed capacity. Nonetheless, natural gas and renewable energy sources occupy a growing share of Mozambique's energy mix. Despite the potential, only 29% of the population has access to electricity, due to limited transmission and distribution networks and unfavorable market conditions for new generation. The industrial and commercial segments are expected to drive demand growth, as residential consumers struggle with the existing highly subsidized tariffs.

To improve this situation, Mozambique has taken significant efforts in recent years in electrifying the country. As a result of partnership with private entities, the country has been registering progresses in the expansion of access to the electricity in the last years.

The country has received funding from international donors (World Bank, Norfund, etc) that are channelled to the rehabilitation and modernization of the infrastructure network to increase the security and reliability of electricity supply through the reinforcement of transmission and distribution lines, the installation of additional transformers to increase reactive compensation capacity and equipment in the cities of Maputo, Matola, Nacala, Pemba and Lichinga.

In addition, the Government, through public-private partnerships, is also investing in exploration and development of the solar energy. Over the last year, the Electricidade de Mozambique- Electricity of Mozambique (EDM), in partnership with private entities, started to construct solar power plants in some Country's provinces with the purpose of increasing the low access to the electricity by the populations living in rural zones.

Fiscal and Taxation regime

In Mozambique, the supply of energy activity comprises jointly or separately, production, transportation, distribution and commercialization including the import and export of electric energy.

The production, transportation, distribution and marketing of electricity in Mozambique, as well as its importation and exportation to or from the national territory, is controlled by the State. For such, the Government has approved the following legislation:

- Law no. 21/97 of 1 October which approves the Energy Law, with the amendments introduced by Law no. 15/2011 of 10 August;
- Decree no. 8/2000 of 20 April which approves the Energy Law Regulation;

In addition, the Government approved the following regulations:

I. Decree no. 42/2005 of 29 November establishes the rules related to the planning, financing, construction, possession, maintenance and operation of electricity production, transmission, distribution and commercialization facilities, as well as the rules and procedures related to the management, operation and overall development of the National Network of Electric Power Transport;

II. Decree no. 48/2007 of 22 October which approves the regulation for the issuance of licences for electrical installations, with the amendments introduced by Decree no. 10/2016 of 25 April;

III. Resolution no. 62/2009 of 14 October which approves the Policy for the development of New and Renewable Energies.

IV. Decree no. 58/2014 of 17 October which approves the Regulation establishing the Tariff Regime for New and Renewable Energies;

V. Ministerial Diploma no. 184/2014 of 12 November which approves the National Electric Grid Code;

VI. Resolution no. 14/2015 of 8 July which approves the Organic Status of the Ministry of Energy and Mineral Resources;

VII. Law no. 11/2017 of 8 September which creates the Regulatory Authority of Energy (“ARENE”).

The Energy Law sets that the concessionaires from Energy sector are subject to the standard tax regime set by the tax legislation in force, and the Council of Ministers may set a specific taxation regime applicable to supply of power activities, by setting appropriate taxation rules and incentives for the investments to be carried on in this area.

So far, no specific tax regime has been created for the energy sector; therefore, the standard taxation regime must be applicable for this sector.

In brief, the following taxes will apply:

Taxes	Rate
Corporate Income Tax	Resident entities – 32% Non-resident entities – Withholding tax (WHT) at rate of 20%
Personal Income Tax	Resident employees – WHT rates vary from 0% to 32%. Non-resident employees – WHT rate is of 20%
Value Added Tax (VAT)	17%
Customs duties	0% to 20% depending on the goods imported
Social security	Employer – 4% Employee – 3%
Stamp Tax	Ad valorem rates - 0.2% to 50% Fixed rates – 200 MT to 2. 500 MT
Municipal taxes	Municipal Tax on Real Estate – 0.4% to 0.7% Municipal Individual Tax -295 MT Municipal Property Transfer Tax – 2% to 10%

Tax audits

The statute of limitation in Mozambique is 5 years. The tax authorities may carry out an inspection whenever necessary. Normally, the inspection occurs after the taxpayer files a refund application or on a random basis before the 5 years period expires.

Regulatory Framework

The key regulators in the energy industry include:

- Ministry of Energy and Mineral Resource (MIREME): This ministry regulates the activities of companies operating the energy, oil & gas sector.
- Electricity of Mozambique (EDM): it is a vertically integrated, government-owned electric utility responsible for generation, transmission and distribution of electricity in the national grid.
- Energy Regulatory Authority (Autoridade Reguladora de Energia - ARENE): A public entity with financial and administrative autonomy, established to supervise, regulate, represent and apply sanctions within the energy sector;
- National Energy Fund (FUNAE): It is a public institution that promotes rural electrification and rural access to modern energy services, in a sustainable manner, and as a contributor to economic and social development in the country;
- National Council of Electricity (“CNELEC”): This entity is subordinate to MIREME, and is responsible for the conciliation, mediation and arbitration between the concessionaires or between the concessionaires and its customers on behalf of the government.

Forms of contracts

The Energy Law in force sets that all others than the Government, that wish to, among others, produce, transport, distribute, commercialise and manage electric installations, need to enter into a Concession Agreement (“CA”) with the Government for such purposes. The CA is granted by means of public tenders.

The Law sets various types of CA, namely:

- Production concession;
- Transportation concession;
- Distribution concession,
- Commercialisation concession;
- Import and export of electric energy concession.

In order to enter into a CA the interested entity (which can either be an individual or accompany) must apply for the concession by means of a proposal, to be presented before the MIREME.

Local content regulations

So far, Mozambique does not have a general legal framework, which sets the standard rules of local content applicable to all the sectors of economy. Currently, the local content rules appear disperse in the legislation of specific sectors of the economy (Oil & Gas, Construction).

In the energy legislation, there is no reference to local content rules for the energy and utilities industry in Mozambique.

Incentives in the power and utilities industry

Investments carried out in a public domain area, such as the case of electricity supply, are governed by the Public Private Partnerships ("PPP") legislation, provided for in Law no. 15/2011 of 10 August and Regulation created by Decree No. 16/2012 of 4 July.

The investments carried out under the PPP regime benefits from the tax incentives foreseen in the investment legislation provided they are eligible for such purpose.

Depending on the nature and dimension of the investment, the concessionaire may benefit from the following the incentives:

- 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.
- accelerated amortizations and reintegration;
- Tax credit per investment;
- Deductions of training expenses as well as specific expenses directly related to the investment, etc.

Namibia

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Oil and Gas Sector

Brief history on Oil & Gas industry in Namibia

The Republic of Namibia is located in Southern Africa, bordering the Atlantic Ocean to the west. It shares land borders with Angola, Zambia, Botswana and South Africa. As a coastal state, Namibia has its Exclusive Economic Zone delineated with an area of 564,748km², of which 86,698km² relates to the Namibian shelf, with water depths ranging between 0 to 200 metres.

Most of Namibian current open blocks for licensing are at deep and ultra-deep-water depths. Prior to 2011, 20 wells were drilled ('95 – '99: 13). In 2012, 2 wells were drilled. In 2013, 3 wells were drilled. In 2014, 1 well was drilled. Since 2015 to date two wells were drilled, both in 2018.

While the results of interpretations of the seismic survey data is considered to be very promising, no commercial oil was discovered to date. This is attributed to the limited exploration activities carried out. The petroleum industry in Namibia is thus still in its infant stage.

Significant Developments

The political environment in Namibia is currently very stable. The country successfully concluded its general elections on 27 November 2019.

The Namibian economy experienced a decline in 2020. This was majorly due to factors such as the covid-19 pandemic, severe drought, decrease in government spending and decline in the wholesale, retail and tourism sectors.

Fiscal regime

The laws that regulate the petroleum industry in Namibia are Petroleum (Taxation) Act 3 of 1991 ("PTA"), the Income Tax Act 24 of 1981 dealing with administrative provisions and the Petroleum (Exploration and Production) Act 2 of 1991 responsible for the levying of royalties.

Petroleum Tax, as levied under the PTA, is paid annually for the benefit of the State Revenue Fund in respect of taxable income received by or accrued to or in favour of any person from a licence area in connection with exploration or production operations carried out in any tax year in such licence area.

The tax rate is 35% with an additional profit tax payable on a sliding scale of between 15% and 25%.

- Royalties are payable at 5% of gross revenues. The market value of crude oil is used as the basis to levy royalty and petroleum tax.
- Activities relating to downstream activities are not considered to be petroleum activities and are taxed under the Income Tax Act.

The PTA is levied on the after-tax net cash flows from petroleum operations. The after-tax net cash flows is determined by deducting the exploration and development expenditure as well as the petroleum income tax from gross income.

Forms of contract

The current practice in the market is to make use of the Model Petroleum Agreement. The Model Petroleum Agreement serves as a basis of negotiation with applicants for exploration licences. This Model is a concession type agreement and its clauses are drawn from the international petroleum industry practice and should therefore not hold any surprises for international petroleum companies.

The Model makes provision for the applicant of a licence to commit to a minimum exploration work program, and further sets out the procedures to be followed by a licensee on discovery of petroleum.

Forms of Petroleum Leases / Licences

The Minister of Mines and Energy is mandated to appoint the Petroleum Commissioner according to the provisions of the Petroleum Act. This Ministry is responsible for assessing licence applications in respect of oil & gas. According to law, it is the Minister's duty to ultimately recommend the granting or denial of the licence application.

The Petroleum Act stipulates three types of licences for which prospectors can apply, namely:

- Reconnaissance Licence: This licence is granted for the purpose of conducting a preliminary exploration of a considerable expanse of land or sea-bed acreage in order to determine where prospecting should be focused once an exploration licence has been obtained. This licence can be extended twice and is valid for no more than two years.
- Exploration Licence: This licence is used to enable the systematic prospecting for oil & gas deposits. It is issued for a period of four years and can be extended twice for no more than two years each time.
- Production Licence: This licence allows the holder to carry on production activities within a specific production area and to sell or dispose of petroleum derived from such production activities from this area. This licence is valid for 25 years and can be renewed only once, for no more than 10 years.

Namibia adopted an Open Licencing System in 1999 for Reconnaissance, Exploration and Production licences.

Annual licence fees

Licence holders are required to pay annual charges to the State Revenue Fund. The charges are calculated by multiplying the number of square kilometres included in the block or blocks by the amounts provided for in Section 67 of the Petroleum Act. In the case of exploration licences, the charge is calculated as follows:

- During the first four years, N$60 per square kilometer
- During the next two years, N$90 per square kilometer
- During the subsequent two years, N$120 per square kilometer
- Thereafter, N$150 per square kilometer

In the case of the production licences, the fee is N$1,500 per square kilometre.

Government participation

No applicant is compelled to offer the State a share in a licence. However, the State can participate in licences and this is agreed upon during negotiations.

Taxation regime

Royalties

Royalties are payable quarterly and are calculated as 5% of gross revenues using the market value of the crude oil as a basis. The minister may prohibit the removal of petroleum from the production area and any

other dealings in respect of the petroleum if the payer fails to remit payment. The royalty paid is deductible in the determination of the taxable income of the licence holder.

Withholding taxes

The general principle, on which Namibia's tax system is based, is the source principle. This implies that residents and non-residents are taxed on the same basis in respect of income which is from a Namibian source or deemed source. All non-resident taxpayers (individuals as well as companies) must submit a tax return in respect of their Namibian source income.

In terms of the provisions of the Income Tax Act, certain types of income will be subject to withholding tax. These are:

- Royalties (Withholding tax on royalties of 10%);
- The right to use (i.e. rental) of industrial, commercial or scientific equipment (Withholding tax on royalties of 10%);
- Management, consulting, technical, administration fees (Withholding tax on services of 10%)
- Directors fees (Withholding tax on services of 25%).
- Interest paid to non-residents (Withholding tax on interest of 10%)

Petroleum companies are exempt from withholding tax on dividends.

Compliance dates

Royalties withholding tax is payable within 20 days after the end of the month during which the liability for payment is incurred. Taxes withheld on payment for services are payable to Inland Revenue within 20 days after the end of the month during which the amount was deducted or withheld.

Withholding tax on interest is payable to Inland Revenue within 20 days following the month during which the interest was paid. Interest is deemed to be paid on the earlier of actual payment or when due and payable.

Non-resident shareholders tax (NRST) – not applicable to petroleum companies

Dividends declared by a Namibian company to a non-resident holding company are subject to non-resident shareholders tax, which is a form of withholding tax. NRST is payable at the standard rate of 10% where more than 25% shares are held in the Namibian company, unless treaty relief is available. Where less than 25% shares are held in the Namibian company, the NRST payable is 20%, unless treaty relief is available. NRST is payable within 20 days after declaration of a dividend.

Capital gains tax

Petroleum Licences/Rights

In terms of the Namibian Income Tax Act, any “sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a petroleum licence, or right to mine petroleum in Namibia, and includes a sale, donation, expropriation, cession, grant or any other alienation or transfer of ownership of any share or member’s interest in a company that holds a petroleum licence or petroleum right, whether directly”, is specifically included in the definition of gross income. A petroleum licence is defined as “includes exploration licence, reconnaissance licence and production licence as defined in the Petroleum (Exploration and Production) Act, 1991 (Act No 2 of 1991).”

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

Section 15(9) deems these profits to be from a Namibian source irrespective of:

- whether the transaction is concluded in or outside Namibia;
- the place where the payment of such amount is made;
- the place where the funds from which the payment is made are held.

The taxable amount is determined by taxing the consideration received (or payment of like nature) or the open market value (whichever is higher) less the following costs:

- acquisition costs and exploration expenditure relating to the petroleum licence or right;
- costs of improving the value of the petroleum licence or right.

Note that (i) and (ii) above may not create a loss.
In the context of a petroleum licence or right, the term “directly” can thus be interpreted to imply ownership for the taxpayer’s own benefit, whereas “indirectly” would imply that the benefit is available through an

intermediate person or arrangement. Therefore, the sale of shares in a company that indirectly has an interest in a petroleum licence/right in Namibia would be subject to tax.

The rate of tax applicable would be 32%, however we would propose that this is confirmed with the Namibian Revenue Authority where a disposal takes place.

It may be difficult for Inland Revenue to track the sale of foreign shares in foreign entities; however, we understand Namibian Revenue Authorities are working closely with the Ministry of Mines and Energy, who must be notified when there is a change of shareholding in a petroleum licence.

Further matters that need clarification and should be confirmed with the Namibian Revenue Authorities are:

- Sale of listed shares in a foreign country – How must the seller account for the taxes in Namibia? To register in Namibia for tax for only one transaction is not considered reasonable, as the taxpayer is then required to deregister subsequently. Could someone act as an agent for the taxpayer in Namibia?
- Sale of shares in a company (directly or indirectly) that owns various petroleum licences in more than one jurisdiction – It may be the case that a holding company is established that owns shares in more than one petroleum licence. How should the tax be accounted for as the selling price for the shares relate to more than one company?

Any farm-in and farm-out agreements would likely be captured by this provision where it results in the direct or indirect sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a licence or the shares in a company that owns a licence.

Petroleum information and assets

Section 7 of the PTA determines the amounts to be included in the gross income of companies falling under the PTA. Paragraph (f) states that “any amount received by or accrued to or in favour of such person in the tax year from such licence area and deemed, under the provisions of section 12(1), to be gross income for purposes of this section;”

Section 12(1) of the PTA deals with profit made on the sale/disposal of the licences/assets relating to the petroleum operations. Where the amount received exceeds the capital expenditure incurred in respect of the licence area;

“the amount of such excess shall be deemed to be gross income received by or accrued to or in favour of such person from such licence area in the tax year in which such amount was so received or so accrued.”

Accordingly, the profit on sale of assets is included as taxable income. The amounts are only subject to tax in the year that production starts. Capital gains arising on sale of assets after production commenced is taxable in hands of the licence holder.

Thin capitalisation

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

In terms of the Income Tax Act, thin capitalisation rules in Section 95A(3) empowers the Minister to disallow the interest expense on the portion of a related party/shareholder loan that he considers to be excessive in relation to the equity of the company.

In terms of Section 95A(3), the cost of the financial assistance (interest and finance charges) will not be allowed as a tax deduction in the hands of the borrower where:

- a non-resident (referred to as the "investor") has granted financial assistance, whether directly or indirectly, to:
    - any "connected person" (who is a resident) in relation to him; or
    - any other person (in whom he has a (25% or more) direct or indirect interest) (other than a natural person) who is a resident (the "recipient"); and
- the Minister is of the opinion that the total value of the financial assistance given by the “investor” is excessive in relation to the fixed capital of the “connected person”.
    - There is no guidance that provides a definition for ‘excessive’. Therefore, each case should be considered based on the facts provided. The 3:1 ratio (Debt to equity ratio) is generally applied by the BON for exchange control purposes, and this guideline is therefore deemed suitable until otherwise determined by Inland Revenue.

Transfer pricing

Excessive expenditure incurred under an arrangement between associated persons may be disallowed. When determining gross income, a sale of petroleum is considered to be at arm’s length if:

- the price provided in the sale agreement is the only consideration
- the sale is not affected by any relationships other than the relationship created in the sale agreement
- the seller or any associated person to the seller, has no interest in the subsequent resale of the petroleum.

In the absence of an agreement, which is normally used to determine the market value of petroleum produced in a specific licence area, the amount will be determined by the permanent secretary with regard to the amount that would be obtained between a willing buyer and willing seller acting in good faith.

Indirect Taxes

Value-added tax (VAT)

Imposition of VAT

VAT is chargeable on the supply of goods or services in the course or furtherance of a taxable activity (excluding exempt supplies) and on the importation of goods, and in certain instances services, into Namibia.

“Taxable activity” means any activity that is carried on continuously or regularly by any person in Namibia or partly in Namibia whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for a consideration.

“Continuously” or “regularly” has not been defined in the VAT Act and thus reference is made to a case interpreted by the New Zealand Taxation Revenue Authorities where the two terms are deemed to be complementary – “regularly” being concerned with repeated actions and “continuously” with an ongoing assignment or assignments.

It is however strongly advised to obtain professional advice prior to commencing activities in Namibia and/or written confirmation from 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.
Case N27 1991 NZTC 3, 229

Compulsory VAT registration

If taxable supplies, being zero-rated and standard rated supplies, exceed N$500,000 in any 12-month period, VAT registration is compulsory.

A person who becomes liable to register will have to apply to the Commissioner of Inland Revenue for registration within 21 days of becoming liable to register.

Voluntary VAT registration

Previously, a person could register for VAT voluntarily where taxable supplies fell below the VAT threshold, and entities in the development phase could still apply for VAT registration at the discretion of the Revenue Authorities based on detailed motivation provided in support of the VAT registration.

A minimum registration threshold of N$200,000 was however introduced in December 2015 for all voluntary VAT registrations. This effectively means that, where it is not likely that the applicant will be making taxable supplies in excess of N$200,000 in its first year of operation, the applicant will not be able to register for VAT. In such a case, it is however recommended that the Revenue Authorities be approached in writing to motivate voluntary VAT registration.

When VAT registered

As a VAT registered person, licence holders must levy VAT at 15% on invoices for goods or services supplied locally. Goods sold and exported from Namibia may qualify for zero-rating (0%) where supported by sufficient documentary proof to prove goods have been exported from Namibia by the licence holder. Goods subject to the fuel levy will be zero-rated (0%), whether supplied locally or exported.

When registered for VAT, licence holders will be entitled to claim an input tax credit for VAT paid on goods and services acquired from local Namibian suppliers against output VAT charged on supplies made in Namibia or partly in Namibia. Import VAT paid on goods imported into Namibia and used or consumed in making taxable supplies by the VAT registered person may also be claimed against output VAT charged on supplies made in Namibia or partly in Namibia, provided sufficient documentary proof is retained to support the VAT and Import VAT claims.

It should be noted that current practice by Inland Revenue does not allow the refund of input VAT claimed on exploration activities, that is where such input VAT incurred cannot be linked to any income in

the form of taxable supplies. In the case where input VAT claims are denied by Inland Revenue, such input VAT incurred becomes a final cost borne by the taxpayer.

VAT & Import VAT Compliance

VAT returns are to be submitted on a bi-monthly basis depending on the tax period awarded to the VAT registered person i.e. either ending on even months or uneven months e.g. 02/2021 (two months ending Feb 2021) or 03/2021 (two months ending March 2021). VAT returns and payments are due on/before the 25th of the month following the tax period.

Import VAT returns and payments are due on a monthly basis on/before the 20th of the month following the month of import.

Custom duties/Import tariffs

Import VAT on goods

Imports, generally, are subject to VAT at the standard rate of 15% on the higher of the open market value of the goods or the free-on-board value ("FOB") uplifted with 10%. In the latter case, the effective rate of Import VAT is 16.5%. The importer is responsible for paying the VAT when the goods are imported. It is irrelevant whether or not the importer is a registered person.

Where the importer is registered for VAT and has an Import VAT account (deferment account), Import VAT becomes payable by the 20th of the month following the month of import.

Import VAT paid may be claimed back on the VAT return as an input credit, provided it is directly attributable to generating taxable supplies. It can only be claimed back in the period that it has been paid and not during the period of importation.

In any other case, the Import VAT is payable when the goods are physically entered into Namibia.

Import VAT and customs duty exemptions

Licence holders are exempt from paying import VAT under Schedule V, paragraph 2(f) of the Value-Added Tax Act 10 of 2000 ("the VAT Act"), and rebated from customs duties (full rebate of duty less ad valorem duties) in terms of rebate item 460.23, Schedule No. 4, Part 2 of the Customs and Excise Act, Act No. 20 of 1998 ("the Customs and Excise Act").

A person who has been licenced by the Ministry of Mines and Energy to explore or mine for petroleum products, may import goods directly or from a Customs bonded warehouse under rebate of customs duties. Customs and Excise service Namibia issues a confirmation of the rebate item (460.23) upon application, subject to certain exclusions such as the importation of distillate fuel and foodstuffs.

The goods imported by the licence holders must be for use solely in operations in connection with the prospecting for or the mining of natural oil or natural gas to qualify for exemption from import VAT, and subject further to the provisions of rebate item 460.23 above for rebate of customs duties, to the extent indicated.

The following will also enjoy Import VAT exemption:

- Goods and services imported by an Export Processing Zone entity ("EPZ") or EPZ management company for use by that entity or company in an export processing zone;
- Fuel levy goods;
- Import of goods donated to the State; and
- Import of goods or services by the State.

Customs duties

Imports from member countries of the Southern African Customs Union ("SACU"), i.e. Botswana, Lesotho, South Africa and eSwatini (previously Swaziland) into Namibia do not attract Customs duties. Excise duties on excisable goods not subject to duty at source collection in the SACU country of manufacture, e.g. wine, will attract excise duties on importation into Namibia.

Imports from outside SACU member countries may attract Customs duties which will be a cost to the importer (not claimable).

Goods entered into a bonded warehouse

Only goods subject to Customs duties at a positive rate may be entered or stored in a Customs & Excise storage warehouse ("Customs bonded warehouse") in Namibia. When goods are cleared into a Customs bonded warehouse, the payment of Customs duties and Import VAT is deferred to the date of clearance and release of the goods for home consumption in Namibia.

If goods are moved to another Customs bonded warehouse, payment of duties and Import VAT is also suspended. The liability to pay Customs duties is acquitted when goods are directly exported from the Customs bonded warehouse. Goods may stay in a Customs bonded warehouse for a period of 5 years.

Control over stock in a Customs bonded warehouse is

very important and subject to Customs inspections. This can be quite an administrative burden.

Export Levy

The Export Levy Act, No. 2 of 2016, was published in the Government Gazette on 20 June 2016 and came into effect on 1 June 2017. This Act introduces Export Levies on certain raw materials exported from Namibia. The Export Levy ranges between 0% and 2% and applies to specified mineral, fish and agricultural products, with the following rates being applicable to oil & gas product exports:

Product	Product Form	Export Levy
Gas	Unrefined gas of all types	1.5%
	Refined gas of all types	0.0%
Crude Oil	Unrefined crude oil of all types	1.5%
	Refined crude oil of all types	0.0%

Export Incentives

In general, export incentives are available where the entity exporting minerals mined in Namibia is approved as an Export Processing Zone Entity ("EPZ entity") by the Minister of Industrialisation, Trade and SME Development.

With effect from 31 December 2020, an EPZ Enterprise that obtains an EPZ certificate issued under Section 14 of the EPZ Act of 1995 after 31 December 2020 will not

benefit from the tax exemption allowances per the Income Tax Act. Existing EPZ Enterprises with EPZ certificates issued prior to 31 December 2020 will enjoy a phasing out of EPZ tax benefits for a period of 5 years commencing on 31 December 2020.

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.

Fuel rebates

Fuel users in the mining sector are entitled to partial fuel levy refunds by the Road Fund of Namibia Administration ("RFA") on bulk fuel purchases (diesel) for off-road use. To qualify for such refunds, fuel users should register with the "RFA" and submit claims on a specified form accompanied by the original purchase invoices issued in the name of the refund claimant by fuel wholesalers registered in terms of the Namibian Petroleum Products and Energy Act.

Environmental Duties

Environmental levies (known first as "environmental duties") were introduced in May 2016 and became payable as from 11 July 2016 on certain motor vehicles, light bulbs and tyres.

The Customs Schedule 1, Part 3 has been amended on 26 September 2016 to include the levying of environmental duties on the import of trucks, including dumpers designed for off-road use and shuttle cars for use in underground mines. The rate of duty is N$40 for each g/km CO_2 exceeding 140g/km emitted by the vehicle's engine. If a manufacturer's certificate confirming the CO_2 emission cannot be produced at time of Customs clearing, a formula based on the engine capacity of the vehicle is applied.

With effect from 1 October 2019, environmental levies also became payable on certain oils and fluids, certain plastic bags and certain primary cells and batteries.

Other taxes

Personal income tax

All persons other than companies are regarded as individuals and their year of assessment runs from the 1st of March to the 28th of February. There is no

distinction between different classes of individual taxpayers and married men and women are taxed on the same basis. The same principles apply for individuals and for other taxpayers except for certain inclusions, exemptions and deductions, which relate specifically to individuals. Services rendered within Namibia will be deemed to be from a Namibian source.

The definition of Namibia was added to the Namibian Income Tax Act in 2015 and reads as follows:

"Namibia means the Republic of Namibia and, when used in geographical sense, includes the territorial sea as well as the exclusive economic zone and the continental shelf over which Namibia exercises sovereign rights in accordance with its national and international laws concerning the exploration and exploitation of the natural resource of the sea-bed and its subsoil and the suprajacent waters as defined in sections 2, 4 and 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990)."

The impact of this is that Namibia is for income tax purposes now extended from 12 nautical miles to 200 nautical miles from the low watermark. This gives the Revenue Authorities an increased right to Namibian source income.

Therefore, if employees render services on a vessel within 200 nautical miles, they will be taxable in Namibia.

The above has a major impact on the oil & gas industry as expats that were otherwise exempted from income tax in Namibia whilst working offshore would now be subject to tax. Furthermore, any subcontractors performing work in Namibia were previously not subject to tax, however with the new legislation they are now subject to tax. This will effectively increase the cost of exploration for oil & gas offshore Namibia as the costs would most likely be passed on to the Namibian operators.

This places a significant administrative burden for the following reasons:

I. The Namibian entities employing the foreign crew will have to withhold PAYE from remuneration paid to them. The foreign individuals are rendering services and earning income in Namibia and will thus be liable to register as taxpayers with the local office of Namibia Inland Revenue. The registered foreign individuals must submit annual income tax returns within 7 months after the tax year end which is 28/29 February for individuals.

II. Employment periods for foreign crew differ between entities in the industry, but on very often foreign crew employment periods last between 3 to 6 months with the foreign crew subsequently returning to their country of residence.

The administrative burden of registering and deregistering all foreign crew members for income tax which involves the following: obtaining information to complete the income tax registration and deregistration forms, compiling PAYE 5 certificates, completing annual income tax returns, obtaining copies of passports as proof of exit from Namibia, obtaining affidavits declaring permanent exit from Namibia etc. This proves to be a logistical hurdle and can be very taxing on the entity and the Human Resources staff responsible for this function with extra costs to be incurred by the entity in certain instances.

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

- Employees' tax by way of employees' taxes - Pay-As-You-Earn ("PAYE").
- Provisional tax payments.
- Assessment when PAYE and provisional tax payments fall short of the assessed liability for the year.

The due dates of annual income tax returns are as follows:

- Persons with taxable income of less than N$50,000 per year are exempt from submitting an income tax return;
- Salaried individuals must submit income tax returns by the 30th of June each year;
- Business individuals need to submit their income tax returns by the 30th of September each year.

Social security contribution

The Social Security Act provides for an income support system designed for the broadest possible number of Namibians. The system provides for maternity leave, sick leave and death/retirement benefits for its members. Social security is based on a principle of 50:50 contributions from employers and employees. This entitles the employee to certain benefits after a set period (minimum 6 months membership period).

Employers are required to register with the Social Security Commission as well as register all their employees who are younger than 65 years of age and who work for more than one day per week.

Contributions should be remitted within 30 days after the end of the month.

Both employer and employee contributions are calculated at 0.9% of earnings. The maximum monthly contribution per employee and employer is N$81-00 by each (i.e. N$162 -00 in total). Should the employer choose to carry the full cost of the contribution, there is a taxable fringe benefit to the employee on half of the contribution made by the employer.

Workmen's compensation

Employers are required, under the Employee Compensation Act, to contribute to a fund that provides cash benefits for industrial injury, disability and death.

Contribution rates vary according to inherent occupational risk, from less than 1 percent in most low-risk commercial/administrative occupations, to 8 percent (drilling, tunnelling and rock blasting).

For the purposes of the Employee Compensation Act the term "employee" means any person whether employed permanently, temporarily or casually, with the exception of the following:

- Persons earning more than N$81,300 per annum (N$6,775 per month)
- Outworkers performing work on premises not under the control of the employer;
- Persons employed casually and not for the purpose of the employer's business;
- Seamen or airmen under a contract of service whose remuneration is fixed solely by a share in the takings; and
- Persons employed temporarily outside the Republic of Namibia for a continuous period of more than 12 months, unless their employers have made special arrangements with the Commission.

Assessments are not calculated on that part of an employee's earnings that exceeds N$81,300 per annum and are payable by employers to the Accident Fund in terms of section 69 of the Act.

Vocational and Educational Training ("VET") levy

With the exception of exempted organisations (please see below), all employers operating within the borders of Namibia with an estimated annual payroll of N$1,000,000 or above for each financial year are required to register with the Namibian Training Authority ("NTA") and pay the levy of 1% on the total payroll.

Registration should be done within the first month of business in Namibia. Employers who fail to register on time may face interest and penalties that will be backdated to their commencement date.

Employers are required to register with the NTA by completing the registration form via the NTA Website (www.nta.com.na or http://lcdrs.nta.com.na/content/home.cshtml)

Payroll is defined by the VET Act as "…the total annual remuneration paid or payable by an employer to its employees during any financial year". Remuneration defined in the Labour Act as "…the total value of all payments in money or in kind made or owing to an employee arising from the employment of that employee". Incentive bonuses and fringe benefits are included in the definition of "remuneration".

This levy must be paid to NTA and not the Namibian Revenue Authorities.

The following employers are exempt from payment of the levy:-

- The State;
- Regional Councils as defined in Sect. 1 of the Regional Councils Act of 1992;
- Charitable organisations;
- Public and not-for-gain educational institutions; and
- Faith-based organisations; whether or not supported wholly or partly by grants from government.

The levy is payable on a monthly basis on or before the 20th day of the following month and each consecutive month thereafter. Payment of the levy must be accompanied by a completed payroll monthly return form (which is available online) and should be completed online or returned to the National Training Forum ("NTF") for reconciliation with the paid amounts. A Penalty of 10% on the outstanding levy will be applied together with interest.

Foreign exchange regulations

All remittances of dividends, interest, royalties etc. to countries outside the ZAR common monetary area need approval from the central bank. To obtain this, foreign denominated loan, trademark/royalty and similar agreements are submitted to the Bank of Namibia for approval when these are entered into.

It is advised that all foreign investments are registered with the Bank of Namibia ("BON"). In respect of the repatriation of investment money, the BON requires a

formal application, through an authorised dealer, to be submitted. We were advised by an authorised dealer that the BON may prescribe a minimum investment period before capital invested may be repatriated.

We advise that an authorised dealer should be consulted prior to effecting any forex movements, as the BON applies regulations exclusively through authorised dealers in Namibia, informing them on a regular basis though dealer circulars of changes in rules and guidelines.

Transfer of funds from Namibia to any destination abroad in respect of imports and other payments can be made on condition that the requisite documentation (e.g. letter of credit, bill of lading / airway bill, sellers' final invoice, inspection certification or such certificate as may be required) and required procedures are followed.

Property taxes – Transfer duty

Natural Persons: Fixed property	
Value of property N$	
0 – 600,000	Nil
600,001 – 1,000,000	1% of value exceeding N$ 600 000
1,000,001 – 2,000,000	N$4 000 plus 5% of value exceeding N$1 000 000
2,000,000 and above	N$54 000 plus 8% of value exceeding N$2 000 000
Other Persons	
Any value	12%

The Minister of Finance announced that the Transfer Duty Act will be amended to levy transfer duty on the sales of shares of entities who own property and/or mining rights. The detail and effective date of this amendment was not yet announced.

Stamp taxes

Certain transactions may attract stamp duty. The amount of stamp duty payable differs and is based on the nature of every individual transaction.

The basic transactions can be summarised as follows:

Transaction	Stamp duty
Agreements or contracts (other than those where duty is specifically provided for in the Act)	N$ 5
Lease agreement or lease	The stamp duty will be based on lease payments, together with additional considerations specified in the lease agreement
Transfer or issue of marketable securities and other share transactions	N$2 for every N$ 1,000 or part thereof of the value/consideration, depending on the specific transaction
Authorisation of share capital	N$5 for every N$1,000-00 or any part thereof of the nominal value of the shares.
Registration of a bond over immovable property	N$5 for every N$1000 of debt secured
Stamp Duty payable in respect of the transfer of immovable property:	Exempt
Natural persons:	
Where the value of the consideration does not exceed N$600,000 and for every N$1,000 or part thereof of the value or consideration in excess of N$600,000	N$10.00
Other persons:	
On the value or consideration for every N$1,000 or part thereof	N$12

Annual duties

Annual Duty is calculated at 0.065% on the issued share capital of the company and is payable annually. The minimum amount payable is N$130 per annum.

Incentives

Prior to production

Accumulated exploration expenditures are deductible in full in the first year of production (unless they have already been transferred to another licence area that has gross income from production).

During production

Exploration expenditures incurred when production already commenced are immediately deductible. Accumulated development expenditures are deductible in three equal instalments commencing in the first year of production.

Losses

Losses resulting from allowable deductions may be deducted as an allowable loss against the gross income from the licence area in the next year. Losses may be carried forward without limitation. Losses arising from different licence areas may, however, not be offset against income from another licence area or other operations.

Compliance requirements

Petroleum entities are subject to the administrative procedures set out in the Income Tax Act. Income Tax compliance requirements for a branch, company, joint venture, businessperson or close corporation will consist of:

- Submission of provisional tax returns (including payment of provisional taxes); and
- Submission of annual tax returns.

Provisional returns and payments must be made, as follows:

- The 1st provisional tax return and payment is due 6 months before the end of the tax year in question. The payment should be based on the taxable income for the first six-months of the tax year and should be calculated at the relevant corporate tax rate;
- The 2nd provisional return and payment is due at the end of each financial year (determined by the year-end of the company, branch, joint venture or close corporation). Provisional tax payable must be calculated based on actual taxable profit for the year, at the relevant corporate tax rate, less the amount paid on the first provisional.
- The 1st and 2nd provisional payments should be equal to at least 40% and 80% respectively of the tax payable for the year. Penalties and interest may be levied on an underestimation of provisional taxes; and
- A top-up provisional payment should be made no later than 7 months after the financial year-end of the company, equal to outstanding taxes for the year, after deducting 1st.

The company/branch/joint venture is required to submit an annual income tax return to the Directorate Inland Revenue. This return is due no later than 7 months after the financial year end of the company. Extension for the submission of the income tax return may be granted by the Receiver of Revenue for an additional 5 months on receipt of a written request for such.

The Income Tax Act was amended in 2015 to include a number of additional administrative provisions. We have outlined the most significant changes below:

- The Minister may, if he has reasonable grounds to believe that a taxpayer may permanently leave Namibia without paying the full amount of tax due, issue a certificate to the Permanent secretary of the Ministry of Immigration and Home Affairs to prevent that person’s departure from Namibia until all taxes are paid in full or arrangements satisfactory to the Minister have been made for payment of the taxes.
- The Minister, or an authorised official, is now authorised, by notice to any person who holds for, or owes money to, a taxpayer, or is liable to pay remuneration to the taxpayer, to require such person to pay the money to Inland Revenue.
- A person who controls or is regularly involved in the management of the overall financial affairs of a taxpayer may now be held personally liable for the tax debts of a taxpayer (i.e. taxes due and payable, penalties and interest) if the Minister is satisfied that the person was negligent or fraudulent in respect of the payment of a tax debt of the taxpayer.
- A joint and several liability exists for any shareholder or member of a close corporation (“CC”) to pay the tax debt of the company or close corporation to the extent that the tax debt arose at a time when the person was a shareholder or member.
- A person (“transferee”) who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for a consideration below the fair market value of the asset is liable for the tax debt of the taxpayer.

Local Content Regulation

The local content is covered under petroleum agreement. The Government completed the draft local content policy. The draft policy is aligned to the content of the petroleum agreement. We do not yet have Regulations related to local content. We verbally confirmed with the Ministry that if the draft policy is approved then Ministry of Mines and Energy and National Petroleum Corporation of Namibia (NAMCOR) participation will be a requirement.

Power and Utilities Sector

Brief overview of Power and Utilities development in Namibia

The Energy Directorate under the Ministry of Mines and Energy is responsible for power and utilities in Namibia.

A number of developments have taken place in the power and utilities sector since Namibia's independence, most notably on the side of regulation and distribution. On the supply side more than half of Namibia's electricity supply is still imported, with the majority from South Africa.

The Electricity Supply Industry's ("ESI") main role players are the Ministry of Mines and Energy (MME) as custodian of Namibia's energy sector; the Electricity Control Board (ECB) as regulator of the ESI; Namibia's electricity utility (NamPower); the Regional Electricity Distributors (REDs), and some municipalities as the country's distribution licensees across the country. A number of Independent Power Producers (IPPs) have recently come on board as generators of renewable energy.

NamPower is the direct supplier of electricity to the REDs and other redistributors such as large mines, some municipalities and end-users who are located outside the licenced area of local authorities and REDs.

Political and Economic updates

Although Namibia is presently under heavy economic pressure, a number of initiatives to allow replacement and improvements of infrastructure have been coming to light. These include the introduction of independent power producers (IPPs), the National Energy Policy and National Renewable Energy Policy under the Ministry of Mines and Energy and renewable energy projects being initiated, all aimed at reducing electricity imports.

Government is still busy with public consultations regarding the New Equitable Economic Empowerment (NEEE) Draft Bill, 2015. The purpose of this Bill, amongst others, is for the implementation, supervision, administration and review of the NEEE Framework ("NEEEF").

The objectives of the NEEEF includes but are not limited to the following:

1. Ensuring the sharing of Namibian resources in an equitable and sustainable basis by the people of Namibia;
2. Creating a socially just society;
3. Implementation of measurable policies of redress and redistribution;
4. Creating vehicles for empowerment;
5. Removing barriers of socio-economic advancement in order to enable previously disadvantaged persons to access productive assets and opportunities for empowerment;
6. Actively guarding against the repugnant tendencies of window-dressing, favouritism, nepotism and self-enrichment;
7. Providing measurement of empowerment targets;
8. Ensuring that an empowering act is meant to launch individuals to empower themselves in the future using the basis of their initial empowerment;
9. Economic empowerment may be organised in the following forms of ownership: public, private, joint public-private, cooperative, co-ownership, and small-scale family owned; and
10. Equitable empowerment is addressing disparities occasioned by class, gender and generational relationships.

We expect that during the next year more clarity will be provided and a revised bill may be tabled for approval.

Fiscal regime

The Energy Directorate under the Ministry of Mines and Energy is responsible for power and utilities in Namibia.

The Electricity Supply Industry's ("ESI") main role players are the Ministry of Mines and Energy (MME) as custodian of Namibia's energy sector; the Electricity Control Board (ECB) as regulator of the ESI; Namibia's electricity utility (NamPower); the Regional Electricity Distributors (REDs), and some municipalities as the country's distribution licensees across the country. A number of Independent Power Producers (IPPs) have recently come on board as generators of renewable energy.

NamPower is the direct supplier of electricity to the REDs and other redistributors such as large mines, some municipalities and end-users who are located outside the licenced area of local authorities and REDs.

.The Energy Directorate enforces compliance of legal requirements of energy legislation (Electricity Act (Act Act 4 of 2007)) through the Electricity Control Board. Public entities (for example Nampower) is also subject to the Public Procurement Act (Act 15 of 2015).

Other laws, except tax laws, that regulate entities operating in the energy sector includes:

- Environmental Management Act (Act 7 of 2007);
- Labour Act (Act 11 of 2007);
- Companies Act (Act 28 of 2004); and

Taxation regime

Income tax on power and utility entities is governed by the Income Tax Act (Act 24 of 1981). Namibia's income tax legislation applies a source basis of taxation and is not residency based.

The following taxes are levied under the Namibian Income Tax Act:

- income tax on companies, individuals and trusts; and
- withholding taxes.

The Act also contains provisions on the administration of tax affairs. This Act is the standard tax regime for Namibian taxpayers. The gross income definition states that you will be taxed on

- income which is received or accrued,
- from a source or deemed source within Namibia,
- provided that the income is not of a capital nature.

There are certain specific inclusions that would form part of gross income as included in Section 1 of the Income Tax Act. Taxable income is calculated as "Gross income" less deductions allowed in determination of taxable income.

Deductions allowed in the determination of taxable income are those that:

- result from carrying on a trade;
- constitute expenditure or losses;
- are actually incurred;
- be in the production of income; and
- not be of a capital nature.

Payments of a capital nature cannot be deducted for tax purposes; for example, when buying a motor vehicle. Certain capital assets may, however, qualify for capital allowances. These assets are usually claimed over a period of time for tax purposes.

The following capital allowances are available under the Income Tax Act:

- Wear and tear allowances & financing expenditure – Section 17(1)(e) & (eA)
- Building allowances – Section 17(1)(f)
- Lease premium deductions – Section 17(1)(g)
- Leasehold improvements – Section 17(1)(h)
- Intangible assets - Section 17(1)(i)
- Renewal of a trademark, design or patent – Section 17(1)(j)
- Allowances relating to leasehold improvements - Section 17(1)(k)
- Scrapping allowances – Section 17(1)(u).

Tax Compliance

Income Tax compliance requirements for a branch, company, joint venture, businessperson or close

corporation will consist of:

- Submission of provisional tax returns (including payment of provisional taxes); and
- Submission of annual tax returns.

Provisional returns and payments must be made, as follows:

- The 1st provisional tax return and payment is due 6 months before the end of the tax year in question. The payment should be based on the taxable income for the first six-months of the tax year and should be calculated at the relevant corporate tax rate;
- The 2nd provisional return and payment is due at the end of each financial year (determined by the year-end of the company, branch, joint venture or close corporation). Provisional tax payable must be calculated based on actual taxable profit for the year, at the relevant corporate tax rate, less the amount paid on the first provisional.
- The 1st and 2nd provisional payments should be equal to at least 40% and 80% respectively of the tax payable for the year. Penalties and interest may be levied on an underestimation of provisional taxes; and
- A top-up provisional payment should be made no later than 7 months after the financial year-end of the company, equal to outstanding taxes for the year, after deducting 1st.

The company/branch/joint venture is required to submit an annual income tax return to the Directorate Inland Revenue. This return is due no later than 7 months after the financial year end of the company. Extension for the submission of the income tax return may be granted by the Receiver of Revenue for an additional 5 months on receipt of a written request for such.

The Income Tax Act was amended in 2015 to include a number of additional administrative provisions. We have outlined the most significant changes below:

- The Minister may, if he has reasonable grounds to believe that a taxpayer may permanently leave Namibia without paying the full amount of tax due, issue a certificate to the Permanent secretary of the Ministry of Immigration and Home Affairs to prevent that person’s departure from Namibia until all taxes are paid in full or arrangements satisfactory to the Minister have been made for payment of the taxes.
- The Minister, or an authorised official, is now authorised, by notice to any person who holds for, or owes money to, a taxpayer, or is liable to pay remuneration to the taxpayer, to require such person to pay the money to Inland Revenue.
- A person who controls or is regularly involved in the management of the overall financial affairs of a taxpayer may now be held personally liable for the tax debts of a taxpayer (i.e. taxes due and payable, penalties and interest) if the Minister is satisfied that the person was negligent or fraudulent in respect of the payment of a tax debt of the taxpayer.
- A joint and several liability exists for any shareholder or member of a close corporation (“CC”) to pay the tax debt of the company or close corporation to the extent that the tax debt arose at a time when the person was a shareholder or member.
- A person (“transferee”) who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for a consideration below the fair market value of the asset is liable for the tax debt of the taxpayer.

Regulatory Framework

The general principle, on which Namibia's tax system is based, is the source principle. This implies that residents and non-residents are taxed on exactly the same basis in respect of income which is from a Namibian source or deemed source. All non-resident

taxpayers (individuals as well as companies) have to submit a tax return in respect of their Namibian source income.

In terms of the provisions of the Income Tax Act, certain types of income will be subject to withholding tax. These are:

Royalties (Withholding tax on royalties of 10%)

- The right to use (i.e. rental) of industrial, commercial or scientific equipment (Withholding tax on royalties of 10%);
- Management, consulting, technical, administration fees (Withholding tax on services of 10%)
- Directors fees (Withholding tax on services of 25%).
- Interest paid to non-residents (Withholding tax on interest of 10%)
- Non-resident shareholders tax (NRST) (withholding tax on dividends). NRST is payable at the standard rate of 10% where more than 25% shares are held in the Namibian company. Where less than 25% shares are held in the Namibian company, the NRST payable is 20%.

Compliance dates

Royalties withholding tax is payable within 20 days after the end of the month during which the liability for payment is incurred.

Taxes withheld on payment for services are payable to Inland Revenue within 20 days after the end of the month during which the amount was deducted or withheld.

Withholding tax on interest is payable to Inland Revenue within 20 days following the month during which the interest was paid. Interest is deemed to be paid on the earlier of actual payment or when due and payable.

NRST is payable within 20 days after declaration of a dividend.

Thin Capitalisation

Thin capitalisation rules empower the Minister to disallow the interest expense on the portion of a related party/shareholder loan that he considers to be excessive in relation to the equity of the company.

When a non-resident (referred to as the “investor”) has granted, directly or indirectly, financial assistance to:
Section 95A(2) of the Income Tax Act, Act 24 of 1981

- any resident “connected person” or
- any other resident person in whom he has a direct or indirect interest of 25% or more (other than a natural person) (the “recipient”)

and the Minister, under the circumstances, is of the opinion that the total value of financial assistance given by the “investor” is excessive in relation to the fixed capital of the Namibian borrower (the “connected person” or the “recipient”), the excessive interest may be disallowed.

The cost of the financial assistance (interest and finance charges) on the portion of the financial assistance which is considered excessive will not be allowed as a tax deduction in the hands of the borrower.

There is no guidance that provides a definition for ‘excessive’. Therefore, each case should be considered on the basis of the facts provided. The 3:1 ratio is generally applied by the Bank of Namibia for exchange control purposes, and this guideline is therefore deemed suitable until otherwise determined by Inland Revenue.

Inland Revenue recently indicated that it is considering a proposed reduction in the debt-equity ratio (probably 2:1) which is used to determine whether financial assistance given to a Namibian company by foreign connected entities is excessive (in relation to its equity).

Neither of these ratios have been officially published.

Transfer pricing

Namibia introduced transfer pricing legislation on 14 May 2005. The legislation is aimed at enforcing the arm’s-length principle in cross-border transactions carried out between connected persons. On 5 September 2006 the Directorate of Inland Revenue issued a Practice Note (“PN 2/2006”) that contains guidance on the application of the transfer pricing legislation. The Practice Note is based on the Transfer Pricing Guidelines for multinational enterprises and tax administrations as set out by the Organisation for Economic Co-operation and Development (OECD).

The objective of this Practice Note is to provide taxpayers with guidelines regarding the procedures to be followed in the determination of arm’s-length prices, taking into account the Namibian business environment. It also explains the Minister of Finance’s views on documentation and other practical issues that are relevant in setting and reviewing transfer pricing in international agreements.

Transfer pricing legislation is essentially aimed at ensuring that cross-border transactions between companies operating in a multinational group are fairly priced and that profits are not stripped from Namibia and taxed in lower tax jurisdictions. The legislation achieves this by giving the Minister of Finance (who delegates to the Directorate of Inland Revenue) the power to adjust any non-market related prices charged or paid by Namibian entities in cross-border transactions with related parties to arm's-length prices. It is therefore entitled to tax the Namibian entity as if the transactions had been carried out at market-related prices.

Tax Compliance

The tax audit process is a discretionary process instituted by Inland Revenue. Inland Revenue will inspect the validity of invoices and whether such expenses are deductible for tax purposes. Generally, income tax audits are initiated on amounts being refunded to taxpayers, with the focus being on high-value refunds. Subsequent to an audit, a letter will be sent to the taxpayer indicating changes made to the return of income.

VAT audits are conducted on all VAT refund returns. Focus areas during VAT audits are capital additions and disposals, adjustments on the returns relating to prior period transactions, Import VAT claimed on VAT returns and significant input credits. VAT refund audits performed by Inland Revenue is conducted in a manner where the physical presence of the taxpayer, or a representative of the taxpayer, is required, as well as original hard copy documentation, as per the requirements of the VAT Act. This process should be driven by the taxpayer, in scheduling meetings with the responsible Inland Revenue taxation officer.

Subsequent to the finalisation of the VAT refund audit process, the refund may be paid within 2 weeks, provided it is below N$5 million. VAT refunds in excess of N$5 million are expected to be paid out within 6 – 8 weeks as this requires an extensive level of authorisation of various senior personnel within the Ministry of Finance. In the event that the taxpayer agrees with the outcome, an assessment is issued. Where the taxpayer is not satisfied with the outcome, an objection may be lodged within 90 days from the date of assessment.

Indirect Taxes

Imposition of VAT

VAT is chargeable on the supply of goods or services in the course or furtherance of a taxable activity (excluding exempt supplies) and on the importation of goods and in certain instances services into Namibia.

"Taxable activity" means any activity that is carried on continuously or regularly by any person in Namibia or partly in Namibia whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for a consideration.

"Continuously" or "regularly" has not been defined in the VAT Act and thus reference is made to a case interpreted by the New Zealand Taxation Revenue Authorities where the two terms are deemed to be complementary – "regularly" being concerned with repeated actions and "continuously" with an ongoing assignment or assignments.

It is however strongly advised to obtain professional advice prior to commencing activities in Namibia and/or written confirmation from Inland Revenue whether the activities, as envisaged, will constitute taxable activities or not.

"Namibia" is defined for the purpose of the VAT Act as including the territorial sea, excluding the economic zone and the continental shelf. As such, for VAT purposes, goods or services supplied by a taxable person up to 200 nautical miles from the low watermark may be subject to VAT

Compulsory VAT registration

If taxable supplies, being zero-rated and standard rated supplies, exceed N$500,000 in any 12-month period, VAT registration is compulsory.

A person who becomes liable to register will have to apply to the Commissioner of Inland Revenue for registration within 21 days of becoming liable to register.

Voluntary VAT registration

Previously, a person could register for VAT voluntarily where taxable supplies fell below the VAT threshold, and entities in the development phase could still apply for VAT registration at the discretion of the Revenue Authorities based on detailed motivation provided in support of the VAT registration.

A minimum registration threshold of N$200,000 was however introduced in December 2015 for all voluntary VAT registrations. This effectively means that, where it is not likely that the applicant will be making taxable supplies in excess of N$200,000 in its first year of operation, the applicant will not be able to register for VAT. In such a case, it is however recommended that the Revenue Authorities be approached in writing to motivate voluntary VAT registration.

When VAT registered

As a VAT registered person, licence holders must levy VAT at 15% on invoices for goods or services supplied locally. A supply of electricity to a residential account is regarded as a zero-rated (0%) supply, whether supplied locally or exported.

It is important to note that, for VAT purposes, the supply of electricity is regarded as a supply of goods.

When registered for VAT, licence holders will be entitled to claim an input tax credit for VAT paid on goods and services acquired from local Namibian suppliers against output VAT charged on supplies made in Namibia or partly in Namibia. Import VAT paid on goods imported into Namibia and used or consumed in making taxable supplies by the VAT registered person may also be claimed against output VAT charged on supplies made in Namibia or partly in Namibia, provided sufficient documentary proof is retained to support the VAT and Import VAT claims.

VAT & Import VAT Compliance

VAT returns are to be submitted on a bi-monthly basis depending on the tax period awarded to the VAT registered person i.e. either ending on even months or uneven months e.g. 02/2021 (two months ending Feb 2021) or 03/2021 (two months ending March 2021). VAT returns and payments are due on/before the 25th of the month following the tax period.

Import VAT returns and payments are due on a monthly basis on/before the 20th of the month following the month of import.

Custom duties/Import tariffs

Import VAT on goods

Imports, generally, are subject to VAT at the standard rate of 15% on the higher of the open market value of the goods or the free-on-board value ("FOB") uplifted with 10%. In the latter case, the effective rate of Import VAT is 16.5%. The importer is responsible for paying the VAT when the goods are imported. It is irrelevant whether or not the importer is a registered person.

Where the importer is registered for VAT and has an Import VAT account (deferment account), Import VAT becomes payable by the 20th of the month following the month of import.

Import VAT paid may be claimed back on the VAT return as an input credit, provided it is directly attributable to generating taxable supplies. It can only be claimed back in the period that it has been paid and not during the period of importation.

In any other case, the Import VAT is payable when the goods are physically entered into Namibia.

Customs duties

Imports from member countries of the Southern African Customs Union ("SACU"), i.e. Botswana, Lesotho, South Africa and eSwatini (previously Swaziland) into Namibia do not attract Customs duties. Excise duties on excisable goods not subject to duty at source collection in the SACU country of manufacture, e.g. wine, will attract excise duties on importation into Namibia.

Imports from outside SACU member countries may attract Customs duties which will be a cost to the importer (not claimable).

Specific rebates (exemptions) do not exist in the Customs and Excise Act for goods imported under the commissioning of a power plant in Namibia, although it is possible to import goods under a preferential trade agreement to which Namibia is a party, e.g. the EU, EFTA, SADC or Mercosur with no or reduced customs duties.

Goods entered into a bonded warehouse

Only goods subject to Customs duties at a positive rate may be entered or stored in a Customs & Excise storage warehouse ("Customs bonded warehouse") in Namibia. When goods are cleared into a Customs bonded warehouse, the payment of Customs duties and Import VAT is deferred to the date of clearance and release of the goods for home consumption in Namibia.

If goods are moved to another Customs bonded warehouse, payment of duties and Import VAT is also suspended. The liability to pay Customs duties is acquitted when goods are directly exported from the Customs bonded warehouse. Goods may stay in a Customs bonded warehouse for a period of 5 years.

Control over stock in a Customs bonded warehouse is very important and subject to Customs inspections. This can be quite an administrative burden.

Import VAT exemptions

The following will enjoy Import VAT exemption:

- Goods and services imported by an Export Processing Zone entity ("EPZ") or EPZ

management company for use by that entity or company in an export processing zone;

- Fuel levy goods;
- The importation of electrical energy;
- Import of goods donated to the State; and
- Import of goods or services by the State.

Environmental Duties

Environmental levies (known first as "environmental duties") were introduced in May 2016 and became payable as from 11 July 2016 on certain motor vehicles, light bulbs and tyres.

The Customs Schedule 1, Part 3 was amended on 26 September 2016 to include the levying of environmental duties on the import of passenger vehicles, tractors, trucks and other vehicles. The rate of duty is N$40 for each g/km CO_2 exceeding 140g/km emitted by the vehicle's engine. If a manufacturer's certificate confirming the CO_2 emission cannot be produced at time of Customs clearing, a formula based on the engine capacity of the vehicle is applied.

With effect from 1 October 2019, environmental levies also became payable on certain oils and fluids, certain plastic bags and certain primary cells and batteries.

Other taxes

Personal income tax

All persons other than companies are regarded as individuals and their year of assessment runs from the 1st of March to the 28th of February. There is no distinction between different classes of individual taxpayers and married men and women are taxed on the same basis. The same principles apply for individuals and for other taxpayers except for certain inclusions, exemptions and deductions, which relate specifically to individuals. Services rendered within Namibia will be deemed to be from a Namibian source.

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

- Employees' tax by way of employees' taxes (Pay-As-You-Earn ("PAYE")).
- Provisional tax payments.
- Assessment when PAYE and provisional tax payments fall short of the assessed liability for the year.

The due dates of annual income tax returns are as follows:

Persons with taxable income of less than N$50,000 per year are exempt from submitting an income tax return;
Salaried individuals must submit income tax returns by the 30th of June each year;
Business individuals need to submit their income tax returns by the 30th of September each year.

Compliance requirements for Employers:

- Employers: PAYE Returns

  The employer should submit within 20 days following the month during which PAYE is required to be withheld.

- Employers: PAYE reconciliation return

  Annual PAYE reconciliation should be submitted within 30 days from the tax year end (30 March each year).

Social security contribution

The Social Security Act 22 provides for an income support system designed for the broadest possible number of Namibians. The system provides for maternity leave, sick leave and death/retirement benefits for its members. Social security is based on a principle of 50:50 contributions from employers and employees. This entitles the employee to certain benefits after a set period of time (minimum 6 months membership period).

Employers are required to register with the Social Security Commission as well as register all their employees who are younger than 65 years of age and who work for more than one day per week. Contributions should be remitted within 30 days after the end of the month.

Both employer and employee contributions are calculated at 0.9% of earnings. The maximum monthly contribution per employee and employer is N$81-00 by each (i.e. N$162 -00 in total). Should the employer choose to carry the full cost of the contribution, there is a taxable fringe benefit to the employee on half of the contribution made by the employer.

Workmen's compensation

Employers are required, under the Employee Compensation Act, to contribute to a fund that provides cash benefits for industrial injury, disability and death. Contribution rates vary according to inherent occupational risk, from less than 1 percent in most

low-risk commercial/administrative occupations, to 8 percent (drilling, tunneling and rock blasting).

For the purpose of the Employee Compensation Act the term “employee” means any person whether employed permanently, temporarily or casually, with the exception of the following:

- Persons earning more than N$81,300 per annum (N$6,775 per month)
- Outworkers performing work on premises not under the control of the employer;
- Persons employed casually and not for the purpose of the employer’s business;
- Seamen or airmen under a contract of service whose remuneration is fixed solely by a share in the takings; and
- Persons employed temporarily outside the Republic of Namibia for a continuous period of more than 12 months, unless their employers have made special arrangements with the Commission.

Assessments are not calculated on that part of an employee’s earnings that exceeds N$81,300 per annum and are payable by employers to the Accident Fund in terms of section 69 of the Act.

Vocational and Educational Training (“VET”) levy

With the exception of exempted organisations (please see below), all employers operating within the borders of Namibia with an estimated annual payroll of N$1,000,000 or above for each financial year are required to register with the Namibian Training Authority (“NTA”) and pay the levy of 1% on the total payroll.

Registration should be done within the first month of business in Namibia. Employers who fail to register on time may face interest and penalties that will be backdated to their commencement date.

Employers are required to register with the NTA by completing the registration form via the NTA Website (www.nta.com.na or http://lcdrs.nta.com.na/content/home.cshtml)

Payroll is defined by the VET Act as “…the total annual remuneration paid or payable by an employer to its employees during any financial year”. Remuneration defined in the Labour Act as “…the total value of all payments in money or in kind made or owing to an employee arising from the employment of that employee”. Incentive bonuses and fringe benefits are included in the definition of “remuneration”.

This levy must be paid to NTA and not the Namibian Revenue Authorities.

The following employers are exempt from payment of the levy:

- The State;
- Regional Councils as defined in Sect. 1 of the Regional Councils Act of 1992;
- Charitable organisations;
- Public and not-for-gain educational institutions; and
- Faith-based organisations; whether or not supported wholly or partly by grants from government.

The levy is payable on a monthly basis on or before the 20th day of the following month and each consecutive month thereafter. Payment of the levy must be accompanied by a completed payroll monthly return form (which is available online) and should be completed online or returned to the National Training Forum (“NTF”) for reconciliation with the paid amounts. A Penalty of 10% on the outstanding levy will be applied together with interest.

Property taxes – Transfer duty

Natural Persons: Fixed property	
Value of property N$	
0 - 600 000	Nil
600 001 - 1 000 000	1% of value exceeding N$ 600 000
1 000 001 - 2 000 000	N$4 000 plus 5% of value exceeding N$1 000 000
2 000 000 and above	N$54 000 plus 8% of value exceeding N$2 000 000
Other Persons	
Any value	12%

The Minister of Finance announced that the Transfer Duty Act will be amended to levy transfer duty on the sale of shares of entities who own property and/or mining rights. The new legislation is expected to be tabled during 2018/19. The detail and effective date of this amendment was not yet announced.

Stamp taxes

Certain transactions may attract stamp duty. The amount of stamp duty payable differs and is based on the nature of every individual transaction.

The basic transactions can be summarized as follows:

Transaction	Stamp duty
Agreements or contracts (other than those where duty is specifically provided for in the Act)	N$ 5
Lease agreement or lease	The stamp duty will be based on lease payments, together with additional considerations specified in the lease agreement
Transfer or issue of marketable securities and other share transactions	N$ 2 for every N$ 1,000 or part thereof of the value/consideration, depending on the specific transaction
Authorisation of share capital	N$5 for every N$1,000 or any part thereof of the nominal value of the shares.
Registration of a bond over immovable property	N$5 for every N$1,000 of debt secured
Stamp Duty payable in respect of the transfer of immovable property: Natural persons:	
Where the value of the consideration does not exceed N$600,000	Exempt
and for every N$1,000 or part thereof of the value or consideration in excess of N$600,000 Other persons: On the value or consideration for every N$1,000 or part thereof	N$10.00 N$12

Annual duties

Annual Duty is calculated at 0.065% on the issued share capital of the company and it is payable annually. The minimum amount payable is N$130 per annum.

Incentives in the industry

No specific incentives are available for the industry. Refer to “Taxation regime” for information on standard capital allowances available.

Nigeria

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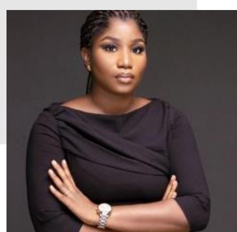

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Oil and Gas Sector

Brief overview of the Oil and Gas Industry in Nigeria

The Federal Republic of Nigeria is a West African nation located along the Gulf of Guinea of the Atlantic Ocean. The country comprises 36 states and the Federal Capital Territory – Abuja. English is the official language in Nigeria, and its currency is the Nigerian Naira (NGN).

In 1956, Shell-BP discovered oil in commercial quantities in Oloibiri (Yenagoa province, now Bayelsa State). The ownership of mineral resources resided with the British Colonial masters, until Nigeria's independence in 1960 when the Nigeria Government began to exercise full control over the industry.

The oil & gas industry is the mainstay of Nigeria's economy, contributing about 95% of the country's foreign trade earnings and about 40% of government's annual revenue.

In 2012, the Nigerian government removed the fuel subsidy, inciting protests in the sector. This prompted the reinstatement of a partial subsidy. With an average nationwide PMS price around NGN 209 -NGN 212 (March 2021), and rising landing costs making it commercially un-viable for private importers of the product, the Nigerian National Petroleum. Corporation ("NNPC") has become the major importer of the product, importing as much as 90% of the nation's needs in 2017.

In June 2020, the President announced the full removal of subsidy on Fuel (Gasoline) and stated it was moving to a market-based pricing regime. This also meant a removal of the price cap that has been placed on fuel price over the years. The Petroleum Products Pricing Regulatory Agency (PPRA) is tasked with monitoring market trends and advising the Nigerian National Petroleum Corporation and oil marketing companies on the monthly guiding market-based price.

From June 2020, the retail price of fuel has continued to be on the rise, with the continuous opening of the economy and gradual recovery of crude oil prices to pre-Covid levels.

The Covid-19 crisis that hit the country in the first quarter of 2020 had a huge impact on Nigeria's GDP figures. The country recorded two consecutive quarters of negative growth have been recorded in Q2 and Q3 of 2020. According to the National Bureau of Statistics (NBS), Nigeria's gross domestic product (GDP) recorded a growth rate of -3.62%

(year-on-year) in real terms in the third quarter of 2020, an improvement of 2.48% points over the -6.10% growth rate recorded in the preceding quarter (Q2 2020). The country exited recession by the fourth quarter of 2020, recording a 0.11% growth (year-on-year) in real terms. In the heat of the Covid-19 Crisis, the price of Bonny Light crude oil price fell to as low as $14.28 in April 2020. With the recovery and re-opening of the economy, the price has continued to increase, growing to $66.26 as at 26 February 2021.

There has been an ongoing process to combine about 16 different Nigerian petroleum laws into a single document called the Petroleum Industry Bill (PIB) which began in 2000. The PIB seeks to set out a new legal framework for the organisation and the operation of the entire oil industry in Nigeria as well as update the provisions in the existing laws to reflect current global practices in the industry.

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. A version was sent by the Presidency (Nigeria's executive arm of government) to the National Assembly (Nigeria's legislative body) in July 2012. Since then, the National Assembly has taken over the drafting and reviewing process from the Executive branch of government.

The Petroleum Industrial Bill (Proposed)

In September 2020, the President presented the latest version of the PIB to the National Assembly for consideration. So far, the revised bill has passed the first reading at the National Assembly.

The Bill intends to introduce relevant changes to not only the administrative, regulatory and fiscal framework of the Nigerian oil and gas industry but also the governance, in order to ensure transparency, strengthen the governing institutions and attract investment capital, among other objectives.

The key objectives of the PIB are as follows:

- To create efficient and effective governing institutions, with clear and separate roles for the petroleum industry;
- To establish a framework for the creation of a commercially oriented and profit-driven national petroleum company;
- To promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria; and
- To foster a business environment conducive for petroleum operations.

The bill proposes the following amendments;

National Hydrocarbon Tax NHT

The Bill proposes to replace the existing Petroleum Profits Tax (PPT) with the National Hydrocarbon Tax (NHT). The NHT is expected to be charged only to oil production, condensates, and natural gas produced from associated gas in an oil field. The NHT rates are categorized below:

Fiscal regime	On shore	Shallow water	Deep off shore
New acreage	42%	37.5%	5%
Convert ed acreage	22.5%	20%	10%

In addition to the NHT, companies involved in upstream petroleum operations will also be subject to Company Income Tax (CIT) at the rate of 30%.

The bill also introduced a section that precludes a company from investing in more than one stream of petroleum operation and the company would have to register a separate company for each stream of petroleum operations- Upstream, Midstream or Downstream.

Royalty

All production of petroleum would be subject to royalties. For royalty purposes, condensates shall be treated as crude oil and natural gas liquids shall be treated as natural gas.

The proposed royalties' payment is as shown below

Royalty	Royalty oil	Royalty gas	Royalty
Onshore area	18%	8%	Onshore area
Shallow water (Up to 200m)	16%	5%	Shallow water (Up to 200m)
Deep offshore	10%	5%	Deep offshore
Frontier basin	8%	5%	Frontier basin
Domestic gas	-	5%	Domestic gas

Deep offshore fields: -

- production during a month of not more than 15,000 barrels per day, the royalty rate will be 7.5%.
- Production above 15,000 barrels per day will be at the rate specified in the table above.

Onshore fields and shallow water fields: -

- production of not more than 10,000 barrels per day (bpd) during a month shall be calculated on a tranche basis as follows:
- First 5,000 bpd 5.0%
- Next 5,000 bpd 7.5%

The bill also sets aside a royalty payable based on price for crude oil and condensates:

- Below US$50 per barrel 0%
- At US$100 per barrel 5%
- Above US$150 per barrel 10%

Between US$50 and US$100 and US$100 and US$150, the royalty rate by price will be determined by interpolation, e.g., if the price is US$75 per barrel, the royalty rate per price will be 2.5%. The price benchmarks are adjusted annually for inflation by adding 2% to the benchmark price and these royalties based on pricing do not apply to gas production and frontier acreages.

Penalties

The new penalty fee for non-filing of income tax returns from NGN10,000 on the first day of default and NGN2,000 for every other subsequent day to NGN10,000,000 and NGN2,000,000, respectively.

The fee for non/late payment of tax - the company will be subject to a penalty of 10% and interest at the prevailing LIBOR or any other successor rate plus 10% as against the previous rate of 5%.

Production incentives

The bill introduces a production incentive for crude oil production by leases which are converted to oil mining leases based on a conversion contract and their renewals which is the lower of US$2.50 per barrel and 20% of the fiscal oil price.

The production allowance for new acreages will be determined as follows:

- For onshore areas, the lower of US$8 per barrel and 20% of the fiscal oil price up to a cumulative maximum production of 50 million barrels from commencement of production and the lower of US$4 per barrel and 20% of the fiscal oil thereafter.
- For shallow water areas, the lower of US$8 per barrel and 20% of the fiscal oil price up to a cumulative maximum production of 100 million barrels from commencement of production and the lower of US$4 per barrel and 20% of the fiscal oil thereafter.
- For deep offshore areas, the lower of US$8 per barrel and 20% of the fiscal oil price up to a cumulative maximum production of 500 million barrels from commencement of production and the lower of US$4 per barrel and 20% of the fiscal oil thereafter.

This version of the bill is expected to be passed by the Nigeria parliament as the final version and the key Petroleum industry law in Nigeria in addition to the Deep Offshore and Inland Basin Production Sharing Contracts Act (DOIBPSCA) signed into law by the President in 2019.

Political Updates

The Nigerian tax space witnessed a turnaround on 13 January 2020 with the signing of the Finance Bill into law by President Muhammadu Buhari. This was very remarkable because the last time it happened was in 1999 (20 years ago).

Building on the successes of the 2019 Finance Act the Finance Act 2020 was signed into Law by the President on 31 December 2020, introducing some changes in the existing tax laws.

Regulatory framework

The key regulators in the Nigerian Oil & Gas industry include:

- Nigerian National Petroleum Corporation (NNPC) - this agency supervises the operations of the industry on behalf of the government and manages her interests therein;
- Department of Petroleum Resources (DPR) - this agency supervises oil & gas operations carried out under the various licences and leases; and
- Federal Inland Revenue Service (FIRS) – this is the revenue collection agency of the Nigerian Government. It administers the Petroleum Profits Tax Act (PPTA) and other taxation issues on behalf of the government.

Fiscal/Taxation regime

Forms of contracts

The most common forms of petroleum contracts in Nigeria include:

Joint Venture Arrangement

This is usually an arrangement between NNPC on behalf of the Federal Government of Nigeria and oil companies. Companies operating under this arrangement jointly own and develop various oil & gas concessions and contribute towards costs and subsequently derive benefits based on their equity participation in an oil block. The parties will typically sign a Joint Operating Agreement to govern relations amongst themselves.

Production Sharing Contract

The Federal Government is the holder of the concession (one or many blocks) and appoints a Contractor to conduct petroleum operations in the area. The Contractor provides the funds and bears the risks until commercial production is achieved. Production is allocated in barrels to royalty, then taxes, then costs and finally profit using a predetermined sharing formula.

Risk Service Contract

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

The Contractor is subject to tax under the Companies Income Tax Act, since it is carrying out operations on behalf of the concession holder.

Special transactions/arrangements

Farm out arrangements

A farm out arrangement may be a financing or technical arrangement typically adopted when the licence holder is incapable of developing the licence area on its own. It is also used by the licence holder to reduce risks. The licence holder called the “farmor” surrenders a percentage of his rights to the “farmee” in return for funding and provision of technical services required. Such funding may involve partial or full reimbursement of past costs previously incurred by the farmor.

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 licences with different equity interest, as a single unit.

It involves re-determining the interests of the parties to the single unit in consideration. This usually leads to adjustments in the share of each party’s production and costs.

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 & gas asset amounts to

indirect transfer of interest in such asset, and therefore requires Ministerial consent.

Forms of petroleum leases

Oil Exploration Licence (OEL): Licence 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 Licence (OPL): Licence granted to a company for the purpose of exploring, prospecting and winning petroleum. The duration of the licence 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): Licence granted to an OPL licensee who has satisfied all the conditions imposed on the licence 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 can produce at least 10,000 barrels per day of crude oil. The duration of the licence is usually a maximum of 20 years but is renewable upon approval.

Royalty

The Petroleum Act, 1969 requires the holder of an OPL or OML to pay royalties to the federal government of Nigeria as soon as production starts. This is usually in form of monthly cash payments at the prescribed rate or by way of royalty oil. The prescribed royalty rates are as follows:

Joint Venture operations

Area	Rate %
Onshore production	20
Onshore production up to 100 meters water depth	$18^1/_2$
Onshore production beyond 100 meters water depth	$16^2/_3$

Production Sharing Contracts

The amendment to the Deep Offshore and Inland Basin Production Sharing Contract (DOIBPSC) Act has eliminated the 0% rate. Royalties would now be calculated on a field basis, dependent on the chargeable volume of the crude and condensates produced per field.

Area	Rate %
Deep offshore (areas from 200m and above water depth)	10
Frontier and Inland Basin	7.5

Additional Royalty based on Price

The amendment also imposes an additional royalty rate to account for increase in price of crude in excess of $20 per barrel.

Price per barrel	Rate %
$0 to $20	0
>$20 to $60	2.5
>$61 to $100	4
>$100 to $150	8
Above $150	10

Other Amendments to the Petroleum Act, 1969

Deletion of section 16: Section 16 of the old Act required a review of the Act after 15 years of commencement of the Act and every 5 years thereafter, but this was never applied. This provision has now been deleted.

Review of Contracts: The Act includes a new section 17 which prescribes that all PSCs shall be reviewed every 8 years. There was a similar provision under Section 16 of the old Act for the review of the PSCs. The old provision triggered a review if the price of crude oil at any time exceeded $20 per barrel in real terms. In such a case, the share of profit of government should have been adjusted in the PSCs to be economically beneficial to the government.

This provision was never enforced until this amendment.

Offences and Penalties: The Act also introduces a new section 18 which stipulates that any person who does not comply with any provision in the Act has committed an offence and will be liable on conviction to a fine not below NGN500m and/or at least a 5-year imprisonment. This is novel as there were no penalties under the old Act.

Taxation regime

Petroleum Profits Tax (PPT) is levied on the profits of corporate bodies engaged in petroleum operations. Individuals (either singly or in partnerships) are not allowed to engage in petroleum operations. PPT is assessed on an Actual Year Basis.

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

Revenue

The chargeable income of a company engaged in petroleum activities is the sum of the following:

- the proceeds of all chargeable oil sold by the company in that period;
- the value of all chargeable oil disposed by the company in that period; and
- all income of the company for that period incidental to and arising from any one or more of its petroleum operations.

Adjusted profit

This is computed by deducting from all outgoings and expenses incurred by the company wholly, exclusively and necessarily, in its petroleum operations for that period, whether within or outside Nigeria, from revenue.

Assessable profit

This is obtained after the deduction from the adjusted profit for the period, any loss incurred by the company in any previous accounting period. The loss deducted cannot exceed the adjusted profit for the period.

Capital allowances

A company engaged in petroleum operations is entitled to claim capital allowances on any qualifying capital expenditure (QCE) if it owns the QCE at the end of the accounting period and the QCE was in use for purposes of its petroleum operations. Depreciation is not deductible for tax purposes; capital allowance is however granted in lieu.

Petroleum Investment Allowance (PIA) is granted to a petroleum company in the first year a Qualifying Capital Expenditure (QCE) is incurred. The following PIA rates are applicable to companies in JV operation.

QCE for	Rate %
Onshore Operations	5
Offshore Operations:	
• Up to and including 100m of water depth	10
• Between 100m and 200m of water depth	15
• Beyond 200m water depth	20

PSC operators are entitled to Investment Tax Credit (ITC) at a rate of 50% of QCE for PSC executed prior to July 1998 and PIA at a rate of 50% for PSC executed with effect from July 1998.

Annual allowance is granted in addition to PIA, in lieu of depreciation. The current rates are 20% for all categories of QCE in the first four years and 19% in the fifth year. The balance of 1% is retained in the books until the QCE is disposed

Restriction of capital allowance /minimum tax

Capital allowance is restricted to the lower of:

- Actual computation; and
- 85% of assessable profit less 170% of Investment Tax Allowance.

The restriction on capital allowances ensures that there is a minimum tax payable at 15% of the company's assessable profits.

Chargeable profits

This is obtained after deducting allowable capital allowances from the assessable profit.

Assessable tax

This is derived after applying the applicable tax rates (below) on the chargeable profit determined.

- 85% for petroleum operations carried out under a Joint Venture (JV) arrangement with the NNPC or any non-PSC over 5 years.
- 65.75% for non-PSC operation in its first 5 years during which the company has not fully amortised all pre-production capitalised expenditure.
- 50% for petroleum operations under PSC with the NNPC.

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.

Treatment of dividends paid upstream petroleum operations that suffered tax under the Petroleum Profits Tax Act (PPTA)

Section 60 of the Petroleum Profit Tax Act (PPTA) exempted dividends paid out of petroleum profits from further tax in recognition of the relatively higher tax rate on petroleum operations. This meant that withholding tax was not charged on dividends from upstream operations. This was also supported by Section 43 of CITA.

The newly signed Finance Act repeals Section 60 of the PPTA and Section 43 of CITA. This means that dividends from upstream companies will henceforth be subject to withholding tax. The current rate is 10% (or 7.5% if payable to recipients of a treaty country). This could be quite adverse for the upstream oil & gas exploration and production sector which are chargeable to the highest tax rate (up to 85% in some instances). This will also affect the valuation of oil & gas assets; global competitiveness and investment appraisals going forward.

Changes by the Finance Act 2019

Investment tax credit on obsolete plant and machinery

Section 41 of the CITA granted incentive to companies that replaced obsolete plant and machinery, whereby a company that incurs an expenditure for the replacement of obsolete plant and machinery, would be granted 15% investment tax credit. The Finance Act repeals this Section and eliminates the incentive going forward.

Taxation of foreign services

The Finance Act 2019 creates a proxy for professional, consultancy, management and technical services performed outside Nigeria if there is a significant economic presence for the service provider in Nigeria. The Nigerian recipient of such services will now be required to deduct withholding tax (WHT) from the applicable fees which will be regarded as the final tax in the hands of the recipients. The Minister of Finance is yet to define the term “Significant Economic Presence”.

Expansion of the definition of goods & services for Value Added Tax

The Finance Act amends the VAT Act by introducing a definition for goods and services. It defines “goods” as movable tangible properties excluding money or securities, and transferrable intangible products, assets or property, excluding interest in land. It then defines “Services” to include anything other than goods, money or securities which is supplied excluding services provided under a contract of employment. Previously, the interpretation of the VAT Act and case law implied that incorporeal property was neither a good nor service and hence out of scope of the VAT Act. However, based on the definition of goods and services per the Finance Act, incorporeal property such as interest in oil mining leases will now be captured under the definition of goods and the transfer of such will be liable to VAT.

Changes made by the Finance Act 2020

Tax filing requirement for entities in the free zone

The Finance Act 2020 amends section 18 of the Nigeria Export Processing Zones Act as well as the Oil and Gas Export Free Zone Act by removing the exemption which relates to taxes, duties, levies and foreign exchange. This means that companies operating within the zones are now subject to other provisions of the Companies Income Tax Act (CITA) and the provisions of the Banks and other financial Institution Act (BOFIA) 2020. Prior to the amendment, companies operating in the zone were not mandated to file tax returns with the FIRS. Going forward, the implication of the amendment is that companies operating in the Oil and Gas Export Free Zone are expected to comply with Section 55 of CITA to file their CIT returns with the FIRS whether they have tax liabilities or not. Failure to do so will attract the penalties stipulated in CITA and the FIRS establishment Act. It is expected that the information provided will enable the FIRS to determine the scope of the operations of such companies which are covered by the free zone exemption and those that are not

Rationalisation of gas utilization incentive

The FA 2020 introduces a new amendment for companies benefiting from the gas utilisation incentives. It restricts the incentive to apply only in respect of the gas utilisation operations of a company, rather than to the company as a whole. The tax-free period of the trade or business will start on the day the trade or business commences production as certified by the Ministry of Petroleum Resources. In addition, any company that has claimed an incentive for gas utilisation in Nigeria under any law including the Petroleum Profit Tax Act (PPTA), or Industrial Development (Income Tax Relief) Act (IDITRA) cannot enjoy the gas utilisation incentive for the same qualifying capital expenditure. For example, where a company has enjoyed the upstream gas utilisation incentive, it cannot transfer the same asset to another company or SPV and claim gas utilisation under CITA or apply for the pioneer incentive under IDITRA.

Minimum Tax

The Act introduces a reduced minimum tax rate of 0.25% (previously 0.5%) of gross turnover less franked investment income for tax returns prepared and filed for any year of assessment falling due between 1 January 2020 and 31 December 2021 both days inclusive. This amendment seeks to address the challenges faced by businesses as a result of the COVID-19 pandemic. With the current economic realities, it would be difficult for many businesses to meet up with their income tax obligations. This incentive will therefore help reduce the tax burden on companies with low margin such as downstream petroleum businesses.

Covid-19 responses, fiscal reliefs and countercyclical measures

The FA 2020 provides for various reliefs in the form of tax deduction for donations made by companies to Covid-19 intervention funds; reduction of minimum tax payable by companies from 0.5% to 0.25% of turnover for the two years of assessment due between 1 January 2020 and 31 December 2021; exemption of small companies from education tax; use of courier service, email or any other electronic means for assessments and objections. Also, there is an exemption of compensation for loss of office up to N10 million from tax; exemption of low-income earners earning minimum wage or less from personal income tax; reduction of import duties and levy on vehicles; exemption of commercial flight tickets from VAT; and duty free importation of aircraft and aircraft components. These measures are designed to cushion the impact of the economic challenges triggered by the COVID-19 pandemic.

Other Changes made by the Finance Act 2020

- Exemption of small companies from mandatory preparation of audited accounts (this aligns with the new provisions of CAMA 2020);
- Use of technology by FIRS for tax administration including accessing information directly from taxpayers' accounting systems;
- There is now a legal framework for the Tax Appeal Tribunal to conduct virtual hearing;
- Capital allowance can now be claimed on software as a qualifying capital expenditure;
- Deduction for life assurance premium on the life of the insured and his/her spouse has been reinstated after it was deleted by the Finance Act 2019;
- There is a restriction of deductible pension contributions to only schemes approved under the PRA;
- Reform of commencement and cessation rules under the Personal Income Tax Act;
- Definition of time and place of supply for VAT purposes;
- Exemption of land and building from VAT;
- Re-designation of stamp duty on bank transfers as Electronic Money Transfer (EMT) levy with a new revenue sharing formula (15% to federal government and the FCT, 85% to states).
- The creation of dedicated accounts by tax types for the payment of tax refunds; and
- Sanctions to ensure confidentiality of taxpayer information by tax officers.

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 instalments 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 instalment (if there is an underpayment). Revision are made if there is any significant change in the parameters used in the estimate i.e. production, cost and price.
- Actual tax returns must be filed within five months after the end of the accounting period, that is, not later than 31 May. The final instalment 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.

Local Content in the Oil & gas Industry

Nigerian Oil & gas Industry Content Development Act (NOGICDA)

The NOGICDA ("Local Content Act") was passed in 2010 to increase the level of Nigerian content in the oil & gas industry. Nigerian Content means "...the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilisation of Nigerian human, material resources and services in the Nigerian oil & gas industry.

Compliance with Nigerian content is a condition precedent for:

- renewal of licences and permits to operate in the industry.
- short-listing companies during pre-qualification exercises and for the grant of contracts in the oil & gas industry.

The Act introduces a levy of 1% on every contract awarded in the upstream oil & gas sector of the economy. Any violation of the Act is liable for a fine of 5% of the contract value and may result in outright cancellation of the contract.

Marginal fields

In a bid to increase participation of Nigerians in the upstream sector of the oil & gas industry, the Federal Government of Nigeria commenced the first reassignment of marginal fields formerly assigned to international oil companies to indigenous players in February 2003 with 24 licences being awarded. Section 16 of the Petroleum Act provides the criteria for the determination of marginal fields and the DPR's Guidelines for Farmout and Operation of Marginal Fields requires 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 FGN announced a second licensing round for marginal fields. 30 marginal fields have been awarded till date; of which 9 are currently producing with the others still in development

Incentives in the oil & gas industry

Oil exploration and production companies

In addition to capital allowances, the following incentives are available to oil exploration and production companies:

- graduated royalty rates and lower PSC tax rates to encourage offshore production.
- education tax is treated as a tax-deductible expense for oil exploration and production companies.

Pioneer status incentive

From 2011, some indigenous oil & gas companies sought the relief granted under the Industrial Development (Income Tax) Relief Act ("IDITRA") to exempt their corporate profits from tax for up to 5-years. The incentive granted by the IDITRA typically applies to companies under the Principal Act, being the Companies Income Tax Act 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 & gas exploration and production is included in the list of pioneer industries. The FIRS

challenged the pioneer status awarded to such companies, but based on a directive from the Presidency, the reliefs were applied up to 2015. In 2015, a list of 44 pioneer products was gazetted and thereafter in 2017, another 27 new industries were added to the list of permissible pioneer products. Both lists exclude oil & gas exploration and production, thus halting the application of this incentive to such companies going forward.

Gas exploitation in the upstream sector

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

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

Gas utilisation in the downstream sector

- An initial tax-free period of three years renewable for an additional two years or an alternative of an additional investment allowance of 35 per cent;
- 15% investment capital allowance which shall not reduce the value of the asset;
- Interest on loans for gas projects is to be tax deductible provided that prior approval was obtained from the federal ministry of finance before taking the loan; however the Finance Act has repealed the ministerial approval, hence, interest on loans are tax deductible and subject only to Thin capitalisation and Transfer Pricing rules
- All dividends distributed during the tax holiday shall not be taxed.

The Finance Act modifies this incentive through the following amendments:

- Consolidated incentive scheme
  The Finance Act introduces a clause which prevents companies that have enjoyed incentives under the Industrial Development (Income Tax Relief) Act (i.e. PSI) from utilising the GUI defined under CITA. Prior to this amendment, companies had enjoyed income tax exemptions in both tax legislation.
- Interest on loan would be subject to general CITA rules
  The Finance Act eliminates the requirement that tax deductions would be taken for interest payable on any loan for a gas project as long as the loan has been approved by the Minister.

Oil & gas Export Processing Zone

The Oil & gas Export Free Zone is located at Onne/Ikpokiri area of Rivers State. It is exclusively for the use of oil & gas companies and related service companies. It focuses exclusively on the oil & gas industry.

Approved enterprises operating within the Zone are exempted from all federal, state and local government taxes, levies and rates. The Export Free Zone offers a range of tax concessions plus other investment incentives including minimal bureaucracy, to ease the flow of business.

Personal income tax

Individuals including employees, Partnerships and Unincorporated Trusts are liable to tax under the PIT Act. The principal basis of liability to tax under the PIT Act is residency. A person is considered resident if he is physically in Nigeria for at least 183 days (including leave and temporary absence) in any 12-month period or serves as a diplomat or diplomatic agent of Nigeria abroad. Resident persons are liable to tax on their worldwide income.

In the case of employment, a non-resident person is liable to tax in Nigeria if the duties of his employment are wholly or partly performed in Nigeria, unless:

- The duties are performed on behalf of an employer who is in a country other than Nigeria.
- The remuneration of the employee is not borne by a fixed base of the employer in Nigeria; and
- The remuneration of the employee is liable to tax in that other country under the provisions of the avoidance of double taxation treaty with that other country.

PIT rate is applied on a graduated scale on taxable annual income as set out below:

First ₦300,000	**7%**
Next ₦300,000	11%
Next ₦500,000	15%
Next ₦500,000	19%
Next ₦1,600,000	21%
Above ₦3,200,000	24%

Taxpayers are entitled to a consolidated relief of the higher of NGN 200,000 or 1% of gross income plus 20% of gross income. PAYE tax must be remitted on or before the 10th day of the month following the payment of salary. There is a penalty for failure to remit of 10% per annum on the amount plus interest on annual basis at bank lending rate.

Employers must file an Annual PAYE return before 31 January every year in respect of emoluments paid to employees in the preceding year and file an estimated annual return for the current year not later than 31 March. There is a penalty for failure to file returns of N500,000.

Withholding tax

WHT 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 from profits on which PPT has been paid.

The company making payments is expected to deduct the tax and remit the tax deducted in the currency of transaction to the FIRS (for deductions from companies) or the relevant State Internal Revenue Service (SIRS) for deductions from individuals, partnerships and unincorporated bodies. WHT due to the FIRS and SIRS must be remitted not later than the 21st and 30th of the following month respectively. The applicable WHT rates on qualifying transactions can be found in the table below:

Natural of Transaction	WHT Rates %	
Particulars	Companies	Individuals/Partnership
Dividend, interest & rent	10	10
Royalties	10	5
Directors' fees	N/A	10
Charter, Lease, Hire of equipment, vehicles, etc	10	10
Commission, consultancy, technical and management fees, legal fees, audit fees, and other professional fees	10	5
Construction of buildings, roads, bridges and power plant	2.5	2.5
All types of contracts, and agency arrangement, other than sales in the ordinary course of business	5	5

The applicable WHT rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Nigeria.

Penalty

- Failure to remit WHT due to the FIRS: A penalty of 10% of tax due and interest at commercial rate.
- Failure to remit WHT due to SIRS: A fine of NGN 5,000 or 10% of tax due, whichever is higher, and interest at the bank lending rate.

Capital gains tax (CGT)

Gains accruing to a chargeable person (individual or company) on the disposal of chargeable assets shall be subject to tax under the Capital Gains Tax Act at the rate of 10%. There is no distinction between long-term and short-term gains and no inflation adjustment to cost for CGT purposes.

All forms of assets, including options, debts and foreign currencies, other than those specifically exempt, are liable for CGT. The gains on the disposal of shares are exempt from CGT.

CGT is applicable on the chargeable gains received or brought into Nigeria in respect of assets situated outside Nigeria. Capital losses are not allowed as an offset against chargeable gains accruing to a person from the disposal of any assets.

Transfer Pricing and Thin Capitalisation

The 2018 transfer pricing rules have incorporated some of the 2017 updates to the OECD's TP Guidelines and some provisions contained in the African Tax Administration Forum's (ATAF) Suggested Approach to drafting TP legislation. Some changes to the prior rules include

- Broadening the concept of "connected taxable persons" to "connected persons" including persons related or associated under the UN and OECD model tax conventions and TP guidelines
- The regulation also restricts the deductibility of intercompany royalties to 5% of EBITDA plus the value of the royalty, for income tax purposes
- Bases of determining transaction prices for transactions involving import or export of commodities
- Specific tests in order to determine the arm's length nature of intragroup charges
- Limitations on accruals and tax deductions for any payments for the exploitation rights to intangible assets
- Limitations of returns entitled to companies that do not control the financial risks associated with their funding activities
- Minor changes to TP declarations, disclosures and documentation, removal of previous safe harbour provisions and removal of automatic acceptance of Customs valuations
- Penalties for failure to adhere to rules include
- Failure to file TP declaration - ₦10 million in the first instance and ₦10,000 for every day failure continues.
- Failure to file updated TP declaration/provide notification about directors - ₦25,000 for every day in which the default continues.
- Failure to file TP disclosure – the higher of ₦10 million or 1% of the value of related party transactions not disclosed; and ₦10,000 for every day in which the default continues.
- Incorrect disclosure of transactions – the higher of ₦10 million or 1% of the value of related party transactions incorrectly disclosed.
- Failure to file TP documentation upon request– the higher of ₦10 million or 1% of the value of related party transactions not disclosed; and ₦10,000 for every day in which the default continues.
- Failure to furnish information/documentation upon request – 1% of the value of each related party transaction for which information/document relates; and ₦10,000 for every day in which the default continues.

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 1,000 standard cubic feet was introduced to curb gas flaring in 1998. In 2018, the penalty for gas flaring was increased to USD 2 per 28.317 standard cubic metres (1,000 standard cubic feet) of gas flared where at least 10,000 barrels per day of oil is produced in any OML area or Marginal Field (or USD 0.50 per 28.317 standard cubic metres where oil production is less than 10,000 barrels per day). 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 prohibited from flaring gas except with the issuance of Gas Flaring Permits/Certificates granted by the Minister of Petroleum Resources.

Earlier in 2015, the Tax Appeal Tribunal (TAT) had ruled in favour of Mobil Producing Nigeria Unlimited (MPNU) and against the FIRS with regards the deductibility of gas flaring penalties. 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 was

regardless of whether a written permit was obtained from the government to flare gas. However, the FIRS, being dissatisfied with the judgement of the TAT, appealed to the Federal High Court (FHC) where it obtained a favourable ruling on 26 March 2018. The FHC held that payments for gas flaring without the prior permission of the Petroleum Minister are not deductible for PPT purposes.

Indirect taxes

Value-Added Tax (VAT)

VAT is charged at a flat rate of 7.5% on the supply of goods and services except those expressly exempted under the Act and those subject to VAT at zero rates.

Exempt items include plants, machinery and goods imported for use in export processing zones or free trade zones, plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations, Petroleum products including aviation and motor spirit, kerosene, natural gas, other liquefied petroleum gases and gaseous hydrocarbons. Renewable energy; Wind and solar powered generators and other equipment, 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.

Taxable person making vatable supplies of N25,000,000 or less are exempt from issuing a tax invoice and filing monthly tax returns. For non-resident company carrying on business in Nigeria, the non-resident Company is required to register with the tax authority using the address of the local customer. The Local customer is obligated to deduct and remit the VAT to the tax authority.

Oil & 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:

a) Increase in the minimum contribution into the Scheme. Employers are required to contribute a minimum of 10% of their employees' monthly emoluments while the employees are to contribute not less than 8%. Under the old law, the minimum contribution by both parties was 15% of basic pay, housing and transport allowances with a minimum of 7.5% by the employer;

b) Inclusion of less private sector employers. A private sector entity is now subject to the scheme where it has 15 or more employees (previously the minimum threshold was 5 employees); The Act also provides that in the case of private organisations with less than 3 employees participation in the Scheme would be governed by guidelines issued by the National Pension Commission (PenCom). However, the Act is silent on the applicability of the Scheme to private organisations with more than 3 but less than 15 employees. Persons exempted under the Act are substantially the same as under the repealed Act.

c) 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.

Other Taxes

Property taxes

Property taxes in Nigeria are usually levied by the state government with varying rates depending on the state and the location of the property within the state. Also, Right of Occupancy fee and tenement rates are chargeable by state and local government authorities. The Lagos Land Use Charge law is seen as a unified property tax as it merges the tenement rate, development charges, ground rent and neighborhood improvement rent into one single tax. Edo State's Land Use Charge law is also a combination of various land taxes. A bill for tax on real property in the Federal Capital Territory (FCT) is being considered.

Stamp taxes

Under the Stamp Duty Act, stamp duty is payable on any agreement executed in Nigeria, or relating, whatsoever, to any property situated in or to any matter or thing done in Nigeria. Instruments which are required to be stamped under the Stamp Duties Act must be stamped within 40 days of first execution.

Stamp duty is chargeable either at fixed rates or ad valorem (i.e. in proportion to the value of the consideration) depending on the class of instrument. Stamp duty is imposed at the rate of 0.75% on the authorised share capital at incorporation of a company or on registration of new shares. The FIRS was designated as the agency responsible for the collection of stamp duties.

Power and Utilities Sector

Brief overview of the Power and Utilities development in Nigeria

Despite being the largest economy in Africa, Nigeria's growth continues to be severely constrained by an insufficient supply of reliable electricity. Over the past decade, the Federal Government has embarked on several initiatives to facilitate increased investments in the power sector and bridge the demand-supply gap. These initiatives are aimed at increasing the generating capacity, improving transmission infrastructure, encouraging the distribution companies to become efficient and generally creating an enabling environment for the industry to thrive. One of such initiatives is the suspension of the 35% import duty on Fully Built Unit (FBU) electricity meters in an attempt to reduce bridge the metering deficit in Nigeria

However, the industry continues to struggle with legacy issues such as regulated tariff that is not cost reflective.

Fiscal Regime and taxation regime

The fiscal and taxation regime are not different from the standard regime. Companies in this sector are subject to Companies Income Tax at a rate of 30% and Tertiary Education Tax at a rate of 2%. All other taxes that are applicable to regular companies are also applicable to companies in this industry.

Tax audits

Companies in this sector not subject in the same manner as other companies in other industries.

Regulatory Framework

The regulation framework in the power and utilities sector is governed by the following acts and regulations.

- Electric Power Sector Reform Act
- Regulations issued by NERC, including but not limited to the Grid Code, Metering Code, Distribution Code, Feed-In-Tariff (F-I-T) regulation, Multi Year Tariff Order etc.

Stamp taxes

Some relevant regulators involved in managing and regulating the Nigerian electricity sector include:

- Federal Ministry of Power (FMP): Policy making arm of the federal government responsible for initiating and formulating programs on the development of the power sector
- Nigerian Electricity Regulatory Commission (NERC): The NERC is an independent regulatory agency responsible for regulating the electricity sector.
- Nigerian Bulk Electricity Trading Company Ltd (NBET): NBET is a Federal Government owned company established in 2010 as a transitional SPV for carrying out, under licence from NERC, the bulk purchase and resale of power.
- Niger Delta Power Holding Company (NDPHC): NDPHC started in 2004 and was conceived as a fast track government under initiative to stabilize the Nigerian Power sector while the privatization efforts were gaining momentum. As part of the privatization efforts, NDPHC will divest 80% of its ownership in 10 generation assets with a combined capacity in excess of 5,100 MW together with requisite transmission infrastructure.
- Transmission Company of Nigeria (TCN): TCN is a government owned entity whose responsibilities include electricity transmission, system operation, and electricity market operations.
- Gas Aggregation Company Nigeria Limited (GACN): GACN was established in 2010 to stimulate growth of natural gas utilization in Nigeria. Among its chief responsibilities, GACN is to facilitate transactions between gas buyers and sellers including managing the dispute resolution process for stakeholders.
- Bureau of Public Enterprises (BPE) serves as the secretariat of the National Council on Privatisation (NCP) and is charged with the overall responsibility of implementing the council's policies on privatisation and commercialisation.
- Rural Electrification Agency (REA) is tasked with promoting, supporting and providing electricity access to rural and semi-urban areas as well as administering the Rural Electrification Fund (REF) to support electrification programs".

Forms of contracts

There are no special forms of contracts in this sector.

Local content regulations

There are no specific local content regulations targeted at the power sector.

Incentives in the industry

- Investment Allowance of 10% on qualifying capital expenditure.
- Gas utilization incentives as amended by the Finance Act: Tax-free period for up to five years; Accelerated capital allowance after the tax-free period 35%: Additional Investment Allowance; 90%: Accelerated Capital Allowance.
- Tax-free dividends during the tax-free period; Interest Deduction
- Plant, machinery and equipment purchased for utilisation of gas in down-stream petroleum operations are exempt from VAT
- Pioneer status: The gazetted list includes manufacture of gas and gas distribution; manufacture of electrical appliances/equipment/components and parts as pioneer industries.
- Custom duties exemption exists for any machinery, equipment and spare parts imported for power generation into Nigeria by an industrial establishment engaged in the exploration, processing or power generation through the utilisation of Nigerian gas for its operation.

Renewable Energy industry in Nigeria

The use of renewable energy in Nigeria is still in its early stages, though a lot of effort has been made towards improving the industry.

The NATIONAL RENEWABLE ENERGY AND ENERGY EFFICIENCY POLICY (NREEEP) was approved by the Federal Executive Council in April 2015 with the policy focus on hydropower, biomass, solar, wind, geothermal, wave and tidal energy power plants and cogeneration plants for energy production, as well as the improvement of energy efficiency as an additional source of energy.

This policy refers to the ongoing harmonisation process of renewable energy and energy efficiency policies in the ECOWAS region. It will be implemented through a national renewable energy action plan (NREAP) and a national energy efficiency action plan (NEEAP) which will guide the development of future renewable energy and energy efficiency related sectoral policies, as well

as the national action plans to achieve renewable energy and energy efficiency targets.

The Critical Elements of the Policy Evidence from nations that have successfully implemented a renewable energy policy suggests the importance of the following regulations and economic instruments:

- Mandatory or voluntary Renewable Portfolio Standards (RPS), which define the percentage of energy generated that must come from renewables by a given target year;
- Generation Disclosure Requirement (GDR), which is applicable when consumers have retail choice and have a preference for renewables;
- Power Production Tax Credit (PTC) to electricity generation companies, which is aimed at incentivizing the adoption of renewable energy;
- Feed-in tariffs (FIT), which typically incentivize electricity producers by offering more favourable pricing for electricity produced through renewables;
- The adoption of a Public Benefits Fund (PBF), which requires that a certain percentage of the tariff is dedicated to supporting renewable energy generation projects on and off the grid.
- Bidding rounds through national renewable energy independent power producer procurement programme;
- Provision of capital grants, tax holidays and exemptions, other incentives for renewable energy projects; and
- Net metering framework.

The Government will provide guarantees and financial frameworks aimed at stimulating the expansion of the renewable electricity market. Considering the risk element involved in financing renewable electricity projects, government investments should enhance rates of return and shorten payback periods in order to attract investors.

Examples of such renewable energy Financing is the $100 Million Green Energy Fund Programme established to ease access to, and flow of, flexible funding/finance for clean energy developers in order to provide clean and dependable electricity to households as well as clusters of micro and small businesses, and industries. The scheme is financed by the Central Bank of Nigeria (CBN), Development Bank of Nigeria (DBN), Bank of Industry (BOI).

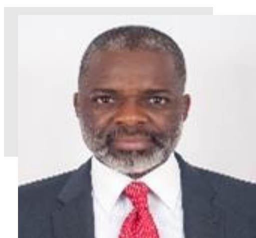
In September 2020, the CBN rolled out the Solar Connection Intervention Facility to complement the federal government’s effort in providing affordable electricity to rural dwellers.

Some incentives available to the industry includes Companies in the Sector are eligible for pioneer status incentives and VAT exemption Renewable energy equipment.

Fiscal and Tax regime are the same as that of the power industry.

Republic of Congo

Contact



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Oil and Gas Sector

Brief overview of the Oil & Gas development in Republic of Congo

The Republic of Congo is a country located in Central Africa. It is bordered by Gabon, Cameroon, the Central African Republic, the Democratic Republic of the Congo, and the Angolan exclave of Cabinda. The Republic of Congo is divided into twelve regions, with Brazzaville as the capital. The currency is the “Coopération financière en Afrique Centrale” (Central African CFA) franc (XAF), and the official language is French. However, several regional languages are also recognized.

Historically, the petroleum industry accounts for an estimated 60% of the State budget. As at, 2019, despite the decade of modest reforms initiated by the government of President Sassou Nguesso, Congo still remains heavily dependent on oil revenues to finance its development. The economy has been badly hit by low oil prices and poor fiscal management, causing total government revenue to fall by nearly a third since 2015 and caused public debt profile to rise to around 110 percent of GDP.

On the other end, the Congolese government has initiated political and economic actions to diversify its revenue stream in a bid to reduce its dependence on hydrocarbon and increase the contribution of tax-based revenue.

The provisions of the 2016 Congolese Hydrocarbon Code aim to valorize both the oil and the gas sectors. Incentives are also granted for the development of other sectors such as agriculture, forestry, tourism, etc. The 2020 Finance Act, as well as numerous decrees were published to change the Congo oil environment from a regulatory perspective.

Oil was first discovered in the Republic of Congo in commercial quantities in the 1960s by Elf Congo. Elf mainly prospected in the Grands Fonds area, offshore Pointe-Noire and they discovered the vast Emeraude deposit. Société Nationale des Pétroles du Congo – SNPC – is the Congolese state owned Oil Company.

The main producers are Total, Eni and Perenco.

Significant new developments in the Republic of Congo

The downturn in the oil & gas sector has significantly impacted the economic environment, and the Congolese administration’s drive to collect taxes, contributions or duties from operators of economic activities in Congo.

On 22 June 2018, the Republic of the Congo, Africa’s third largest oil producer, joined the Organisation for Petroleum Exporting Countries (OPEC). Congo Brazzaville became the fifteenth member of OPEC and the seventh African member nation.

Although Congo's oil sector was badly affected by the global dip in prices and a slowdown in its own output since 2014, it has been rejuvenated by new projects scheduled to boost output by a quarter to 350,000 barrels per day (bpd) this year. It has become the third-largest producer in sub-Saharan Africa, up from fourth.

The 2020 Finance Act has inserted numerous provisions relating to the Exploration and Production (E&P) sector, as well as to the Energy and utilities sectors.

Fiscal/Legal Regime

The provisions of the Hydrocarbons Code

The 2016 Hydrocarbons Code implemented or modified tax and legal provisions, as follows:

The legal provisions of the Hydrocarbons Code

- Previously, the hydrocarbons code provided for the possibility of a licence holder to be the National Oil Company or an International Oil Company, however the new code has consecrated the exclusive granting of hydrocarbons titles to the National Oil Company in Congo, Société Nationale des Pétroles du Congo (SNPC). These provisions are confirmation of an old practice in the country, and will allow the SNPC to have a formal and central role under the negotiation phases with international oil companies;
- Regarding the national participation, the provisions of the new code establishes a minimum participation of 15% for national private companies in the PSCs. The interest is carried during the exploration phase and the rate is set at 25% for Cooperation Contracts concluded in order to continue the production on a field whose production licence expired;
- The Operator is allowed to register a branch in country during the exploration phase and during this phase, the Operator must incorporate a company;
- Regarding the duration of the authorization and licences (prospection and exploration), the provisions of the new code are more or less unchanged for the initial duration granted (1 year for prospection authorization, 4 years for the exploration licence) as well as the extension period (with a twice 3 years extension). However, more details are provided for licences in borders zones or marine zones beyond 550 meters of water depth which are granted for 6 years;
- Regarding the Production licence, under the previous code, this was granted for an initial period of 20 years, with an extension of 5 years and so forth. Under the new code, the granting period depends on the expected duration of production of the deposit. It cannot exceed 25 years for liquid hydrocarbons, 30 years for gas or solid hydrocarbons deposit but this period can be extended for one period of 5 years;
- Under the previous code, the State's after-tax profit oil was negotiable. However, with the new code, a minimum state profit oil is now set at a minimum of 35% of the calendar year profit oil and cash payment or in-kind-payment at the request of the State;
- Any member of the Contractor may assign all or part of its participating interest in a petroleum contract, including its rights and obligations under that contract, subject to the approval of the assignment by the Minister in charge of hydrocarbons. Under the previous code, the approval of the Ministry in charge of hydrocarbons was still required, but with the new code, the requirements for such assignment to be approved will be set under a specific regulation;
- Also, such transfer of interests was free between related entities, but subject to the approval of the Ministry in charge of hydrocarbons. Now, with the new provisions, the approval of the Ministry in charge of hydrocarbons is still necessary, but the transfer agreements must be tax registered within one month from their date against a fixed registration fee. For the applicable fee, the new code refers to the General tax code provisions;
- Any change in the shareholding of the entities forming the Contractor's group must be reported to the Minister in charge of hydrocarbons;
- Any relinquishment decision by one of the entities forming the Contractor's Group implies the loss of the petroleum cost recovery and the loss of funds advances made to the national oil company;
- Gas flaring which was allowed with approval of the Minister in charge of hydrocarbons only is now prohibited except in few exceptional cases and with the special and prior approval of the Minister in charge of hydrocarbons.

The legal provisions of the Hydrocarbons Code

- The 2016 Hydrocarbons Code has maintained the tax stability clause mechanism and the survival of the existing charter conventions and contracts signed with the State, to ensure the contractor maintaining the general economic balance of the oil contract on change of laws and regulations affecting the taxation regime applicable to the contractor or other members of the contractor after the entry into force of the PSC. However, any

amendment to these PSCs must be compliant with the provisions of the 2016 Hydrocarbons Code. In this respect, the new code has granted a period of 24 months to allow companies comply with these provisions;

- However, 24 months after the publications of the 2016 Hydrocarbons Code, no additional provision related to the 24 months regularisation period was published. Although the 2019 & 2020 Finance Act inserted some E&P related provisions, there has been no further discussions on the 24 months grace period.
- The Minister responsible for hydrocarbons, along with other administrative authorities and the oil companies, will implement the establishment of a national fund for environmental risk prevention. The National fund will comprise of an annual contribution of 0.05% of net hydrocarbon production valued at the tax price from each operator. The contribution is recoverable and is a tax-deductible cost;
- The 2016 code has introduced the bonus mechanism, according to which bonus will be awarded upon the execution of a contract, amendment, the granting of exploration or production licence and the extension of production licence. The bonuses are not recoverable; however, they are tax deductible;
- Contractor's Group members are liable for a provision for diversified investments ('PID') levied at the rate of 1% on the annual production. It is a recoverable and tax-deductible cost;
- For the corporate income tax rate, the 2016 code refers to the General tax code provisions, i.e. 30%;
- The New Code lists the taxes the Contractor's Group members are liable to;
- The Contractor is jointly liable with its subcontractors for any abuse in the application of the provisions relating to the customs regime of the petroleum operations;
- During the validity of the contracts, Oil & Gas subcontractors can benefit from specific custom regimes, provided these subcontractors were delivered certificates/attestations from the contractors.

The provisions inserted under the Finance Act 2019

The Finance Law 2019 inserted some provisions that are under the 2016 Hydrocarbons Code are now inserted the General Tax Code and brought precisions about or created the following tax, fee or duty:

- Production for diversified investments ('PID'): with the 2019 Finance Act, for oil activities, any company is subject to the payment of the 1% production for diversified investments ('PID'). The PID is due on the operating licences upon production of liquid or gaseous hydrocarbons. The 2019 Finance Act recalls that the PID constitutes a recoverable oil cost and is paid by the operator on behalf of the members constituting the Contractor. Subject to the Charter Conventions, its taxable base is equal to 1% of the value of the net oil production multiplied by the fixed price of the same period;
- Provision on royalty on consumed oil different from the Art. 158 of the Hyd. Code provision on RMP. It is due on the amount of oil consumed in the oil production process for the exploitation permits and has as a triggering event the use of the quantities of liquid or gaseous hydrocarbons for the needs of the exploitation of an oil field. The 2019 Finance Act also states that the new RMP is payable by the operator on behalf of the members composing the Contractor and is equal to the product of the quantities consumed by the 15% (RMP rate) as set in the relevant Convention or PSC;
- The transfer of ownership through the usufruct of the equipment to the State is systematically established after the accounting depreciation of the property or the complete refund of the said equipment. This transfer of ownership is regularized by an act signed between the State and the company;
- The material in the deed of transfer of ownership between the Contractor Group and the State shall be subject to sale or assignment in accordance with the procedures in force. This provision is related to the article 12 of the Accounting Provision of the PSC template, and of the Article 104 of the Hydrocarbons Code, according to which any sale or assignment must proceed in line with the provisions of the Hyd. Code and Accounting Appendix.
- Income from the sale of petroleum equipment that has resulted in the recovery of petroleum costs is, where applicable, revenue and is collected by the public treasury. The same applies to the sale of equipment constituting ferrous scrap.
- The use of equipment that has been recovered from oil costs results in the setting of a rent by the Contractor group when the Licence has been reassigned. This rent is fixed as follows:
  - 10% of the amortization of the net cost for new equipment as defined in the accounting procedure;
  - 7.5% of the net cost amortization for equipment in good condition as defined in the accounting procedure;

  - 5% of the amortization of the net cost for used equipment as defined in the accounting procedure;
  - 2% of net cost amortization for equipment in poor condition as defined in the accounting procedure.
- The contribution to the substance for the prevention of environmental risks, which is equal to 0.05% of the oil production of a field multiplied by the fixed price. This contribution for the prevention of environmental risks is a recoverable oil cost.
- During the exploration phase, production from long-term production trials is transferred to a national refinery. The transfer price corresponds to the price of the national reference crude to which a discount is applied, after deduction of the taxes in force. This discount cannot exceed US $ 0.75 per barrel sold. This sale proceeds is shared equally between the State and the Contractor group that participated in the exploration expenses. This provision is a limitation to the right granted to the Contractor to use production resulting from the trials period, since it is clearly stated that this should be transferred to the national refinery. This seems to be a provision against abuse of the too long production trials periods. Moreover, the 3rd Section of this article also states that the sale proceed is equally shared between the State and the Contractor group having been involved in the exploration expenses. Under the Hydrocarbons Code, more specifically the article 55 section 2, the contractor was permitted to use those production without any mention of the equal share between the Contractor Group and the State. It is indeed stated that “the contractor shall be permitted to use hydrocarbons extracted from the ground as part of its research or for its production trial needs”

Amendments to tax provisions of the 2020 Finance Act

The 2020 finance Act has brought the following amendments concerning tax provisions within the gas and petroleum sector:

1. The purchase orders of the petroleum companies with foreign legal persons and petroleum subcontractors are, in the absence of a basic contract, subject to the formality of registration under a fixed fee of 1,000,000 Francs CFA before their execution.
2. The abolition of the tax on negative externalities from mining and petroleum activities.
3. Subject to registration fees for acts of transfer of participating interests in petroleum contracts. The acts evidencing the transfer of participating interests (rights and obligations) in petroleum contracts are now presented to the registration formality against payment of a proportional duty of 5%, with a minimum collection of 1,000,000 FCFA.
4. Repeal of legal instruments relating to taxation applicable to the petroleum sector
5. Confirmation of the legal framework applicable to the petroleum sector

The legal framework applicable to the various concession contracts, production sharing and their respective endorsements remains the Hydrocarbons Code and its texts of application, as well as any national regulations applicable to the petroleum sector.

Local content regulations

The introduction of local content provisions occurred with the publication of the Law no 3-2000 dated February 1st, 2000 regulating the requirements for carrying out activities under the sub-contracting services.

With the 2016 Hydrocarbons Code, a specific part of the Code is dedicated to local content regulation with which contractors will have to be compliant.

Some of the key provisions related to the local content rules, are as follows:

- The obligation of contractors and their subcontractors to implement and enforce training and promotion programme for Congolese staff in all areas of the upstream oil & gas sector;
- The obligation for the contractors and subcontractors to give priority to the realization of works necessary for their operations to Congolese supplies and services companies, as long as the conditions of price, time and quality are substantially equivalent. It is stated that this obligation remains even if the price offers made by the Congolese companies are 10% higher than those of foreign companies;
- the obligation for other suppliers to partner with Congolese suppliers when the offer of the latter is recognized as technically acceptable;
- The production and development costs of Congolese origin cannot be lower than 25% of the whole production and development costs. When this cap is not met, and not justified, the costs representing the difference is not recoverable. In exploration phase, the percentage is set in the minimum works program;
- Under the previous code, unless a waiver was granted, upstream oil & gas risks had to be insured through Congolese and foreign brokers with

Congolese insurance companies. The new code provides for insurance through Congolese insurance brokers and with Congolese licenced insurance companies (except a waiver from the Minister in charge of insurances is obtained).

These rules relating to local content have just been reinforced by the entry into force of the 4 decrees below dated November 15, 2019, namely:

- Decree No. 2019-342 of November 15, 2019 setting terms and procedures for the exercise of subcontracting in the upstream petroleum sector;
- Decree No. 2019-343 of November 15, 2019 setting the terms and conditions for the exercise of service in the upstream petroleum sector;
- Decree No 2019-344 of November 15, 2019 setting the penalties for non-compliance with the provisions relating to local content in the upstream petroleum sector;
- Decree No. 2019-345 of November 15, 2019 regulating the employment, promotion and training of Congolese staff in the petroleum sector.

These texts now provide for the following:

1. Regarding decree n ° 2019-342 of November 15, 2019, which sets the conditions and procedures for the exercise of subcontracting in the upstream oil sector, the text, published in Official Gazette No. 47 of 21 November 2019, made the following changes:

   Only public or private national companies, foreign-owned companies established in the Republic of Congo having opened up to the Congolese at least 30% of their share capital, foreign companies operating in joint-venture with national private companies, foreign companies operating under the short-term licence to do business or branch regime, are authorized to carry out the subcontracting activity in the upstream oil sector,

   Congolese companies promoted and managed by Congolese companies and whose technical and supervisory staff consists of at least 60% of Congolese are given priority in awarding subcontracting contracts,

   The minimum participation of Congolese in the share capital of companies engaged in subcontracting activity in the upstream oil sector is 30%.

Regarding the decree No. 2019-343 of November 15, 2019 setting

1. Regarding the decree No., which set the penalties applicable for non-compliance with local content provisions in the upstream oil sector.

The following provisions are inserted:

- Fines ranging from XAF 20 million to XAF 200 million, depending on the case, for non-compliance with the provisions relating to the employment and training of Congolese personnel. These fines also apply to subcontractors' companies or service providers companies operating in the upstream oil sector.
  Sanctions relating to the promotion and use of local goods and services:
  - A fine of XAF 250 million, in addition to the impossibility of recovering the oil costs related to the work carried out by this company, for any operating company using subcontracting companies not having licence or whose licences are not valid;
  - A fine of XAF 100 million for any subcontracting company or service provider exercising without prior licence or authorization to practice,
  - A fine of XAF 250 million, in addition to the withdrawal of licence or authorization, for any subcontracting company or service provider that carries out activities other than those covered by its licence or authorization;
  - A fine of 50 XAF million for non-compliance with the provisions relating to exclusive and semi-competitive regimes;
  - A fine of XAF 100 million for any company having a tender procedure that does not comply with the production sharing agreement signed with the Republic of Congo;
  - A fine of 20 million FCFA for failure of prior approval by the Republic of Congo of local content clauses contained in the specifications;
  - A fine of XAF 100 million, in addition to the withdrawal of the licence or authorization, for non-compliance by any subcontractor or service provider with the local content clauses contained in his contract;
  - A fine of 50 XAF million, in addition to the impossibility of recovering the associated oil costs, for non-compliance by any oil company with the local content clauses contained in the contract;
  - A fine of XAF 50 million for failure to submit the half-yearly program of works or failure to present half-yearly accounts of the purchase transactions carried out during the previous semester;
  - A fine of XAF 100 million, in addition to the impossibility of recovering all oil costs incurred for the year, for failure to observe the minimum

impossibility of recovering all oil costs incurred for the year, for failure to observe the minimum percentage of oil costs of Congolese origin; and

- A fine of XAF 100 million, in addition to the impossibility of recovering all related oil costs and the nullity of this market, for any award of private contract without prior authorization from the Republic of Congo.

Regarding the decree

The contractor, its subcontractors, service providers and suppliers must employ Congolese personnel as a priority;

Any contractor, its subcontractors, service providers and suppliers in the oil & gas sector wishing to recruit personnel must conclude a recruitment contract with the Ministry of hydrocarbons and the Ministry responsible for employment and skills training;

Any contractor, its subcontractors, service providers and suppliers, in the oil & gas sector, must, within ninety days of their establishment in Congo, submit to the Minister in charge of hydrocarbons and the Minister in charge of the employment and skills training a plan of “congolisation” of the positions to be filed;

90% of the total personnel must be Congolese personnel ten years after the establishment of any contractor, its subcontractors, service providers and suppliers, of which at least 80% senior executives;

The hiring of foreign personnel in the oil sector is done only with the prior authorization of the Minister in charge of employment;

The duration of expatriation contracts within the same company is limited to five years at all periods;

No expatriate employee may work in the oil sector unless he has obtained from his employer, in advance, a contract of employment duly validated by the Minister in charge of employment;

Any application for the hiring of expatriate personnel must include evidence of non-existence or unavailability of Congolese citizens with the qualifications and experience required on the national market;

Any contractor, its subcontractors, service providers and suppliers must submit a physical and digital copy of the human resources development program and related revisions to the Ministry in charge of hydrocarbons and the ministry in charge of employment; all necessary documentation for this program;

Any contractor, its subcontractors, service providers and suppliers have the obligation to grant promotion and advancement to Congolese personnel, and to communicate to the Ministry in charge of hydrocarbons and the ministry in charge of employment, the list of promotions and advancements made during the detailed examination of the individual situations of Congolese personnel held each year;

Any contractor, its subcontractors, service providers and suppliers have the obligation to pay Congolese personnel remuneration in accordance with the Collective Bargaining Agreements of the sector of activity to which it belongs;

The seafarers’ premium allocated to employees of subcontractors, service providers and suppliers operating on offshore sites must be identical to that received by the contractor's personnel;

Any contractor in the oil & gas sector must, from the effective date of his oil contract, finance a training program for Congolese personnel on all oil operations;

Posts held by expatriates are subject to mentoring; and

Any expatriate has the obligation, for a period not exceeding five years, to transmit to the Congolese staff who will take over the post, the theoretical knowledge and skills necessary for the proper exercise of the profession that the post, subject of the guiding, requires.

Financing consideration (thin capitalization issue)

Thin capitalization 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 (3.50%) plus two points.

Interests above those two thresholds are not deductible for corporate income tax purpose and are treated as dividends. Under profit sharing contracts, the taxable profit is grossed up as per provisions of the said contracts, as such, the thin capitalization rules have no impact in practice.

Tax regime

Basis of taxation

Under the new tax regime, the contractor and contractor members, with respect to oil operations, are subject to the following taxes:

- Contributions for licences or any other substitute contributions;
- Taxes on developed and undeveloped property;
- Property occupation tax or any other substitute tax;
- Sole/Single tax on wages at a reduced rate and social security contributions;
- Withholdings at the source owed by third parties for income taxes for individuals, corporate taxes, income tax on securities, and real estate tax;
- Contributions and royalties from payments for services rendered;
- Corporate tax under the conditions stipulated in Articles 166 to 174 of the Hydrocarbons law;
- Registration and stamp duties;
- Tax on effective funds transfers from the Republic of the Congo to foreign countries and vice versa.
- Tax on electronic transactions (Digital Hub);
- Electronic stamp in digital sector;
- Contribution to the universal service and access fund for electronic communications;

Direct taxes

By the provisions of the 2016 Hydrocarbons Code, combined with the wording of the PSCs provisions, Hydrocarbons production resulting from each exploitation permit is allocated to the State and to the contractor as follows:

- a portion of net production is allocated toward the proportional mining royalties;
- out of net available production, the contractor is entitled to a portion of production as repayment for recoverable oil costs incurred during oil operations for the exploitation permit (cost oil) up to the cost stop limit;
- the remaining net available production (profit oil) is divided between the State and the contractor.

Under the PSCs, the quantities of oil allocated to the oil companies' partners on a block are net of taxes, and namely net of corporate income tax (CIT). Under this regime, the corporate tax (which is calculated at the rate defined in accordance with the general tax code) is paid as a flat and full discharge by delivering to the State its share of the profit oil.

From a State perspective, this secures oil revenues and from an oil company's perspective, this fixes the amount of corporate income tax due and thus the net after tax profit derived from production.

In addition, oil companies must pay a special reserve for diversified investments (Provision pour Investissements Diversifiés) but this is not really a tax since it is treated as reimbursable petroleum costs. Please note that the fiscal regime that applies to oil companies (i.e. upstream oil & gas companies) differs from the one which is applied to subcontractors.

Although there are no changes regarding the calculation method, the 2016 Hydrocarbons Code provides for the following changes for O&G companies:

- Regarding cost recovery, under the previous code, this was set at 60% of annual production and up to 70% of annual production when circumstances call for it. Now the rate is at 50% of annual production and up to 70% of annual production when circumstances call for it;
- Under the previous code, the State's after-tax profit oil was negotiable. However, with the new code, a minimum state profit oil is now set at a minimum of 35% of the calendar year profit oil and cash payment or in-kind payment at the request of the State.

Royalty

During the production phase and before any allocation of cost oil and for oil profit purposes, the State is entitled to a certain percentage of the oil production in consideration of a royalty. The mining royalty is levied at the rate of 15% on net production for liquid hydrocarbons (12% in remote area) and at the rate of 5% for natural gas and solid hydrocarbons. Unless the State decides otherwise, it is paid in kind or in cash.

Surface area royalties

Among the fiscal levies made by the State in the Congolese oil legislation are the surface exploration and exploitation royalties. These two categories of royalties are respectively paid per square kilometre depending on the surface area of the exploration or exploitation permit, as the case may be.

Indeed, according to article 157 of the Hydrocarbons Code, surface area royalties are owed by the contractor for an oil contract's exploration or exploitation perimeter. Surface area royalties are considered as cost oil and paid on an annual basis and mainly go to local communities. These are deductible from the taxable base used to calculate corporate tax.

Pursuant to Decree No. 2000-186 of 12 August 2000 setting the rates and rules for the collection, recovery and management of the superficial royalty, any holder of a research permit or is subject to the payment of the Superficies Royalty in accordance with the rates set out

below:

- research permit: 3,000 FCFA/km^2;
- exploitation permit: $800/km^2

.
The sums collected shall be paid to the Treasury Public, which manages and distributes it as follows:

- 1/3 to the Treasury;
- 2/3 to the Public Authorities.

Payment of the superficial fee shall be carried out no later than 20 January of each year, on pain of a fine equal to the sum of at least twice the amount of the fees payable.

According to the new HCC, the above recalled taxable base, tax rate, and terms for collecting, recovering, and managing surface area royalties have still to be updated by decree in the Council of Ministers.

Double Tax Treaties

Applicable DTTs concluded by the Republic of Congo include:

- Congo-France (September 1st, 1989);
- Congo-Italy (October 8th, 2014);
- Congo-Mauritius (June 26th, 2014);
- UDEAC DTT (December 14, 1965);
- Tunisia (October 4th, 2005 - Not in force);
- China (September 5th, 2018 - Not in force yet).

Capital gain tax

General Capital gains are taxable and treated as any other revenue.

The 2016 Hydrocarbons Code provides that any contractor member that assigns all or part of its rights and obligations resulting from a production sharing contract must pay a flat tax of ten percent (10%) if capital gains are earned in the assignment., The difference between the assignment price obtained by the assignor and the total remaining cost recovered by the assignee contractor member should be considered as capital gain.

Transferor and transferee will be jointly responsible for the tax payment. This tax is not applicable on transfer of interest to a Congolese registered company whose capital is owned at 100% by the transferor. In addition, the code provides that the transferee right for costs recovery is limited to the value of the interests when this value is lower than the value of unrecovered costs.

Based on the General Tax Code provisions, unless a exemption applies, the net capital gains realized from direct or indirect transfer of assets giving rise to a change of control in a Congolese company are taxable in the Republic of Congo at the rate of 20%.

Indirect taxes

Value added tax (VAT)

Oil & Gas companies are exempted from VAT on all their oil & gas related transactions. In this regard, transactions which are not directly intended for petroleum works (not directly related to the studies, research, exploration, development, exploitation, production, transport and stock of Oil) are subject to VAT at the rate of 18%, plus a 5% surtax applied on the amount of VAT (classified as private /domestic expenses). A list of providers and subcontractors being exempted from VAT is provided to the tax authorities. Any transaction realised by entity not listed under the said list will be subject to VAT.

If applicable (expenses not directly related to petroleum works), and provided is not listed under the exempted listed companies:

- VAT return must be submitted on a monthly basis on the 20th at the latest of the month following the realisation of the operation;
- The payment must occur at the same date as the filing, i.e. on the 20th. Please note that if it is a nil declaration, it still must be filed.

Custom duties

Oil & Gas companies are benefiting from a specific regime regarding their imports and exports. Imports are classified in four categories and custom duties range from zero to standard rate, however, most imported items are exempted. Additionally, oil exports are exempted from exports duties. When applicable, import duties are payable at rates ranging from 5% to 30% on the customs value of imported goods.

- Basic necessities (including cement) 5%
- Raw materials and capital goods 10%
- Intermediate and miscellaneous goods 20%
- Consumer Goods 30%

The following additional entry taxes apply on importation of goods:

- Economic and Monetary Community of Central Africa (CEMAC) integration tax: 1% on CIF value;
- Statistic tax: 0.20% on CIF value;
- Organisation for the Harmonization of Business Law in Africa (OHADA) contribution: 0.05% on CIF value;
- Economic Community of Central African States (CEEAC) contribution: 0.04% on CIF value;
- African Union integration contribution: 0.2% on CIF value.

Oil exports are exempted from exports duties.
A 2% computer royalty to cover expenses incurred by the Customs Administration on computer data processing is applicable, without exception or exemption, to all importation and exportation of goods. The royalty is levied at the entry and at the exit for temporary imported goods.

Any exemptions, reduced rates and flat-rate computer fees are now abolished for companies in the oil sector (Finance Act 2020). The 2016 Hydrocarbons Code provides that the contractor shall be jointly and severally liable, with its suppliers, sub-contractors, and service-providers, to the customs administration for any impropriety in the application of provisions of the customs regime applicable to oil operations, including their penalties.

The hydrocarbons administration has the power of general inspection and communication rights over all oil operations activities. In this respect, as provided under the 2016 Hydrocarbons Code, the hydrocarbons administration may, at any time, perform or cause to perform any inspection in the field, which it deems necessary, to learn how the oil operations are being conducted, including the methods and techniques being used and the oil costs incurred. The contractor shall assist the administration in any way necessary.

Amendments to customs provisions of the 2019 Finance Act

- The new Finance Act brought precisions (or just recalled) on the following customs duties and taxes:
  - For all imports, the customs values retained by the approved inspection companies are to be considered as a reference for the calculation of customs duties;
  - Any goods which are not inspected before shipment and those which benefit from the specific exemptions are subject to the inspection formalities at destination;
  - Petroleum products and equipment exempted from customs duties and taxes are those provided for in Act 2/98-UDEAC-1508-CD61 of 21 July 1998 amending act 2/92-UDEAC-556-CD-SE1 of April 30, 1992 and its appendix.
- New import process for exploration and exploitation equipment: imports of materials, equipment and products for exploration and exploitation of oil and mining are now subject to the following circuit:
  - Storage in areas under customs control;
  - mandatory scanner inspection;
  - Escort by the Customs Services to the final destination.

With the Finance Act 2020, fees for import inspection of goods collected by inspection companies shall be abolished with effect from 1 May 2020. As far as the import of goods is concerned, the related costs are now abolished. The deletion is not extended to the formality, which must still be accomplished.

Heavy products (weighing more than one tone per cubic meter and transported in bulk in most of the case), however, are exempt from all these formalities.

- Introduction of export fees on mining products (in liquid, solid or gas form) due by the exporter: export fees are payable for exports of mining products declaration by 0.1% of their FOB value;
- Reinsertion of a 0.2% fee on the FOB value of the goods for obtaining a certificate of conformity on all exports: impact on subcontractors' activities (e.g. ship-owners), and indirectly on the Contractor Group. The subcontractor will pass the cost to the Contractor Group;
- Institution of the 1% Digital Hub Fee.

Amendments to customs provisions of the 2019 Finance Act

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 agreements. The registration fee may either be proportional or fixed.

The Finance Act for the year 2019 provides that contracts and amendments concluded in the petroleum subcontracting sector must be submitted for registration within 15 days of the month following the month of their signature, on pain of a fine of 5 million FCFA.

Unlike registrations fees, stamp duties are not significant.

Amendments to customs provisions of the 2020 Finance Act

Scope of the levy of the African integration contribution:

The levy of the African contribution is liquidated on the customs value of eligible imported goods, except the following goods:

- All goods from a member state,
- Goods from the territory outside a CEMAC Member State for internal consumption and re-exported to another Member State,
- Goods received in the form of aid, donations and subsidies which are not reimbursable by the State and by other public administrations and intended for charitable works,
- Goods from non-member states imported under financing agreements with foreign partners, subject to a clause expressly exempting said goods from any fiscal or parafiscal levy.

Incentives

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

Compliance requirements

Despite no corporate income tax due/payable, oil companies are nevertheless required to file an annual tax return (Document Statistique et Fiscal) before May 20 of each year. For the 2019 FY, the deadline is May 20, 2019.

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

The Tax Administration has adopted in the course of the 2016 year, a general tax return, covering all taxes and duties filed on a monthly, quarterly and annual basis.

Based on these new provisions:

- There is no obligation for taxpayers to attach appendices to the tax return;
- Down payment on various taxes at the customs cord is no longer required;
- No sanctions will be levied for the omission of wording on tax exemptions or not by virtue of Charter Convention.

Audit and other reporting requirement

Tax authorities conduct audits on a very regular basis. Whenever a year can become statute-barred, they automatically launch a tax audit before the deadline. In practice, tax inspectors are very aggressive in the frame of tax audits. All financial statements (if any) are meticulously analysed and additional documents are often requested.

However, beside the aggressiveness of the tax inspectors in the frame of tax audit, taxpayers have the possibility to discuss with these inspectors and provide additional documents (if required) before the issuance of the assessment. With the economic situation of the country, the discussions are tougher with the Tax Authorities.

Profit repatriation issues

Profit repatriation is guaranteed in the PSC.

Transfer pricing regulations

Transfer pricing legislation was introduced in 2012 by the Finance Act. The 2017 and 2018 new legislation amended the transfer pricing provisions as outlined below:

- The amount of turnover triggering the obligation to produce a Transfer Pricing documentation was increased to XAF 500,000,000 (compared to XAF 100,000,000 previously) of;
- The inapplicability of the rules on transfer pricing for companies of the same group located in Congo;
- Creation of a specific audit for transfer pricing;
- Creation of a simplified or light transfer pricing documentation filing requirement, which is to be transmitted to the administration within 6 months from the filing of the summary financial statements;
- The setting up of a maximum 3 year-validity period for prior agreements on price under certain conditions;
- The Confirmation of the five (5) different methods to set up the arm's length price, derived from the OECD recommendations;
- The definition of the applicable penalties in case of non-production or insufficient production of the documents required as part of a transfer pricing

audit.

- Failure to produce the light documentation or uncompleted light documentation provision triggers a fine of FCFA 5,000,000.
- The failure to reply to the formal notice mentioned issued by the Tax Administration will trigger a fine of 10,000,000 FCFA for each audited financial year (5,000,000 FCFA for each financial year in case of partial response);

Amounts invoiced by the foreign company deemed to not reflect the arm's length conditions are added back to the fiscal year result of the Congolese company at the rate of one-third (1/3) of their amount.

Other tax issues

Personal income tax

The oil companies' employers 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 40%.

Personal tax rates are applied progressively (they increase with the taxpayer's taxable income). The rates for the tax year ending December 31, 2018 are as follows:

Annual Taxable Income (Francs CFA)	Rates Applicable to Income Band
Up to 464,000	1%
From 464,001 to 1,000,000	10%
From 1,000,001 to 3,000,000	25%
From 3,000,001 to 8,000,000	40%

The tax is withheld by the employer.

A single tax at the rate of 7.5% based on the gross remuneration of employees shall be borne by the employer. The single tax on salary is liquidated by the services of the tax administration and the national social security fund. The single tax on wages remains payable to the tax authorities for the part attributable to the state budget and the national housing fund. For the part intended for ONEMO and the promotion of vocational training, it is payable to the CNSS under the same conditions as social security contributions.

Social security contributions

Social security contributions are due in connection with salaries paid to employees according to the following table:

Name	Basis	Rate
Family allowance	Salary including benefit in kind capped at XAF 7,200,000	10.035% borne by the employer
Labor accidents	Salary including benefit in kind capped at XAF 7,200,000 per year	2.25% borne by the employer
Retirement	Salary including benefit in kind capped at XAF 14,400,000	8% borne equally by the employer and 4% by the employee

Property Tax

It is established as an annual contribution on buildings based on masonry foundations, such as homes, factories, shops, warehouses and factories with the exception of those specifically exempted. The property tax on building for residential use is set on the taxable cadastral value of the property, less 75% in consideration of the decay, maintenance and repair costs.

The property tax on leased or allocated buildings for professional use is set the taxable rental value of these properties, less 75% in consideration of the decay and maintenance costs and repair.

The tax is imposed on any private property under the name of the owner on January 1 of the year of taxation. However, when a property is encumbered with usufruct or leased long lease, land tax is established in the name of the beneficial owner or the lessee, pursuant to Article 608 of the Civil Code.

For the calculation of the property tax, it is applied to the net taxable income of the rate fixed by resolution of the People's Councils of the Municipalities and Regions. The land tax on non-built property is set at the rate of the taxable value of said properties. The assessed value is 50% of the cadastral value.

The rate is in principle fixed by Municipalities and approved by the Minister of Finance within the limits of a maximum amount determined annually by the National Assembly. To the best of our knowledge, the rate of the tax was set at 20% for the City of Brazzaville and 15% for Pointe-Noire as at 2005. No recent information was available at the time of completing this survey.

Rent tax

Occupancy Tax

Occupancy tax is paid for any construction of durable materials or facilities occupied by individuals or legal entity. It is ranged from XAF 12 000 to XAF 60 000 for premises used for residential purposes and from XAF 120 000 to XAF 500 000 for professional use premises.

In order to prevent agencies from being taxed at the same rate as their headquarters, the 2017 Finance Act reduces the tax rate for companies with several agencies or other professional entities as follows:

- For very small and small size companies, non-profit organisations, other professions and non-commercial organisations and secondary establishments for medium-sized enterprises: XAF 60,000;
- Medium size companies for the principal establishment and secondary establishments of large enterprises: XAF 120,000;
- Large size companies: XAF 500,000.

Non-declared contracts fines for oil companies

The Finance Act 2018 introduced penalties for omissions relating to declarations subscribed by oil operators with respect to contracts concluded with petroleum subcontractors.

The Finance Act for the year 2019 provides that contracts and amendments concluded in the petroleum subcontracting sector must be submitted for registration within 15 days of the month following the month of their signature, on pain of a fine of 5 million FCFA. Oil companies are still required to produce two declarations:

- the quarterly return of the exhaustive list of subcontractors with whom they have signed a contract;
- the monthly return of remunerations paid and WHT levied on the amounts paid to subcontractors.

Failure to comply with the monthly or quarterly obligation relating to declarations subscribed by oil operators and not withholding taxes is sanctioned by a fine of three million (3,000,000) FCFA. Any omission or inaccuracy information in the declarations referred to above will trigger a fine of ten thousand (10,000) CFA francs incurred as many times as it is found of omission or inaccuracy in the information provided.

Power and Utilities Sector

Brief overview of Power and Utilities development in Republic of Congo

The Republic of Congo is a country located in Central Africa. It is bordered by Gabon, Cameroon, the Central African Republic, the Democratic Republic of Congo, and the Angolan exclave of Cabinda.

The Republic of Congo is divided into twelve regions, with Brazzaville as the capital. The currency is the “Coopération financière en Afrique Centrale” (Central African or ‘CFA’) franc (XAF), and the official language is French. However, several regional languages are also recognized. Like some other countries in Central Africa, the Republic of Congo has a vast river system with many rivers, including the Congo River. This gives it an immense energy potential.

The Congo River (also spelled Kongo River), which is the world's deepest river with measured depths in excess of 220 m, is the second longest river in Africa after the Nile and the second largest river in the world by discharge volume of water. Its size/dimension makes it the world's ninth-longest river. It is the only river to cross the equator twice. The Congo Basin has a total area of about 4,000,000 km2 (1,500,000 sq. mi), or 13% of the entire African landmass.

Economic updates

The Republic of Congo benefits from an impressive hydrographic network made up of about thirty rivers and other navigable rivers, among which tributaries of the majestic Congo River.

In this respect, the Congo and its tributaries conceal a huge potential electrical energy (100,000 MW), doubly favored in this respect by their sustained flow, and their long profile interspersed with sudden unevenness.

However, to date, despite its immense potential hydroelectric and the commissioning of a new hydroelectric dam (Imboulou dam) and a gas-fired power plant, the Congo still suffers from a deficit in the supply of electricity.

Notwithstanding the liberalization of the energy sector in 2003, following the entry into force of the new Electricity Code, the Republic of Congo has not been able to take advantage of its immense hydropower resources, of which exploitation would allow real energy independence.

The energy supply is barely sufficient and the reliability of the electricity supply remains in deficit due to a dilapidated network, significant technical losses and a very uncertain electricity management by the electricity company SNE (National Electricity Company) which has a monopoly on the transportation, distribution and sale of electricity in the Congo). The SNE and SNDE the National Water Supply Company were dissolved on September 2018. Both entities were respectively replaced by “Énergie électrique du Congo” and “La Congolaise des Eaux”.

In 2017, the country's electricity coverage rate was below 50% in cities and estimated at 5.6% in rural areas; the national distribution network, which covers only the main cities of the country, forces villagers to resort to alternative solutions such as kerosene, which is more expensive.

Despite difficult economic conditions, some hydroelectric projects are developing, conducted by foreign companies, mainly Chinese, and should generate an additional installed capacity of nearly 1,500 MW:

- dam Chollet between Cameroon and Congo,
- Liouesso hydroelectric power station in the Sangha department, inaugurated on May 29, 2017, with a capacity of 19.9 MW,
- Sounda dam (estimated production capacity: 700 MW) in the Department of Kouilou, whose studies are ongoing.

Dam rehabilitation projects are also underway: the Moukoukoulou dam in the Bouenza department, with a capacity of 74 MW, and the Djoué dam (Brazzaville), which would increase from 15 to 24 MW.

Political updates

The diversification of the Congolese economy is more than ever the priority strategic option, as structured and expressed in the action program of his Excellency Mr. Denis Sassou Nguesso, President of the Republic, «The March towards development» (from 2016 to 2021).

To achieve this, the Government has considered that the improve and modernization of this energy sector by building a national energy boulevard for the whole country, would provide to the Republic of Congo an energy independence capable of supporting the industrial diversification effort that the country has started.

Also, with the same view, the Government of the Republic, by the law n ° 22-2018 of June 13, 2018 has recently decided to dissolve the SNE and replace it with a new company to be created.

The energy and hydraulics sector provisions of the 2019 Finance Act

- A 1% fee is set up in the energy and hydraulics sector. This fee is set in the energy sector at 1% of turnover for independent producers, and at 0.75% of turnover for self-producers.
- In the hydraulic sector, the fee is determined according to the use of the water collected (agro pastoral, domestic, mining, industrial or commercial uses). It is set per cubic meter of water taken according to the use that is made of it. This price ranges from 0 to 400 FCFA per cubic meter of water withdrawn. Any delay in the payment of the fee carries a penalty of 10% and the non-payment of the fee is subject to a penalty of 100%.
- The payment of electricity invoice, as well as water should be made by bank transfer or e-payment / tele-payment.
- Establishment of royalties in the energy and hydraulic sector of:
  - For the energy sector rate:
    - 1% of turnover for independent producers,
    - 0.75% of turnover for self-producers;
  - For the hydraulic sector rate: from 0 to 400 CFA F per cubic meter depending on the nature of the use (mining, industrial, agro pastoral, etc.). This provision is also addressing oil operators since they are also effectively self-producers.

Changes within the Energy and Hydraulics Sector by provisions of the 2020 Finance Law

The operative event of the royalty: the royalty is applicable when the self-producer of electricity transfers part of its production to third parties.

Basis of the royalty: the royalty payable by operators in the electricity sector is calculated based on the turnover before taxes made by producers and self-producers of electricity.

Royalty rate:

- 1% of annual turnover for electricity producers,
- 0.75% of annual turnover for self-producers,

Electric independent producer licence issuance fees

- XAF 25,000,000 for an installed power between 5MW and 25 MW,
- XAF 75,000,000 for an installed power between 25 MW and 50 MW,
- XAF 150,000,000 for an installed power greater than or equal to 50 MW

Fiscal regime and taxation regime

The Law No. 14-2003 dated April 10, 2003 on the Electricity Code

According to the Article 33 of the Law No. 14-2003 dated April 10, 2003 on the Electricity Code, "The activity of the delegate related to the public electricity service is subject to the legal and fiscal ordinary tax law system, without prejudice to the application of the provisions of this code" (translated)

It emerges from the above recalled provisions that, with the exception of the specific provisions provided in the Electricity Code applicable to companies benefiting from a delegation of public electricity service, the tax regime applicable to companies operating in the field of electricity is the standard tax regime.

As such, the above-mentioned tax provisions applicable to the delegates of the public electricity service concern:

- The depreciation,
- The provisions, and
- The value added tax.

Depreciation:
Based on the article 34 of the Republic of Congo Electricity Code, delegates of the public electricity service are authorized to make financial depreciation charges on the assets created in the delegation contract.

These financial depreciation charges are calculated annually by allocating the carry forward of the gross value of the property by umpteenth on the number of years of the delegation contract remaining to run, regardless of this number of years.

Provisions:
Delegates of the public electricity service are authorized to make provisions for renewal. These provisions are intended to allow renewal; replacement value of the goods referred to in the delegation contract. These provisions are the subject of a plan based on an inventory which fixes, for each property, its life and its renewal value. This plan is updated each year for both dates and values.

Value Added Tax (VAT):
Delegates of the public electricity service are authorized to recover the VAT on the work carried out. The terms of recovery are determined in the delegation contracts in accordance with the texts in force.

Regulatory framework

The electricity sector is governed mainly by the following Laws:

- Law No 06/67 dated June 15, 1967 relating to the creation of the National Energy Company,
- Law 067/84 dated September 11, 1984, relating to the amendment of the corporate name of National Energy Company,
- Law No. 14-2003 dated April 10, 2003 on the Electricity Code,
- Law No. 15-2003 dated April 1st, 2003 establishing the National Rural Electrification Agency,
- Law No. 16-2003 dated April 10, 2003 establishing the Electricity Regulatory Agency
- Law No. 17 -2003 dated April 10, 2003 establishing the Electricity Sector Development Fund,
- Law No.22-2018 dated June 3rd, 2018 on the dissolution of the National Electricity Company,
- Decree No. 2007-290 dated May 31st, 2007 approving the Articles of Association of the Electricity Regulatory Agency,
- Decree No. 2007-291 dated May 31st, 2007 approving the Article of Association of the regulatory agency of the rural electrification sector,
- Order No. 681 dated March 19, 1994 on the revaluation of electricity tariffs in the Republic of Congo.

Forms of contracts

It should be noted that the delegation contracts of the public electricity service can take the following forms:

- The Concession,
- The Farming contract,
- The public management service,

- The licence, etc.

Local content regulations

The Electricity Code provides for the delegation of the management of all or part of the public electricity sector only to Congolese public or private persons (Article 23).

Incentives in the industry

There are no special incentives for companies operating in the power or electricity industry sector, except those provided for companies wishing to benefit from the benefits provided by the investment charter. These companies can request to benefit from customs and tax advantages provided by the Investment Charter (Law No 6-2003 dated January 18, 2003) in relation with the importance of their investments in Republic of Congo.

Senegal

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Oil and Gas Sector

Brief overview of the Oil & Gas industry in Senegal

Senegal is a West African country which covers an area of 196,190 km². It borders the Atlantic Ocean in the West and has terrestrial borders in the north with Mauritania, in the East with Mali, in the Southeast with Guinea and in the Southwest with Guinea-Bissau.

Senegal is one of only a handful of countries to have a near-enclave within its borders. The official language is French.

In the wake of the discovery of oil & gas deposits in 2014, the Government of Senegal has adopted a set of measures aiming to establish a framework for the upcoming oil & gas activity.

The Strategic Orientation Committee for Oil & gas was also created. This committee is in charge of assisting the President of the Republic and the Government in defining, supervising, evaluating and monitoring the implementation of the State policy on the development of oil & gas projects. From a tax and legal perspective, the General Tax Code was amended, and a new Petroleum Code was adopted.

Senegal has also concluded the Grand Tortue/ Ahmeyin agreement with Mauritania in February 2018 for the development of the oil & gas field located at the sea border shared by both countries. An additional act to this agreement has also been ratified in 2019. These agreements aim to provide a framework for the exploitation of the GTA, the equitable sharing of revenues, for tax purposes, among others.

Significant new developments in Senegal

In 2020, a new government has also been presented, and a new Minister for Oil & Energy has been designated. No major economic changes occurred last year. The authorities pursued the PSE vision (Plan Senegal Emergent) which is a multi-billion investment program, currently underway to establish Senegal as a crucial economic hub in the region.

However, the development of the Grand Tortue gas province has been delayed due to the coronavirus pandemic, and production will start in two years. The delay could have been longer, but stakeholder engagement played a key role in setting this agenda.

The Senegalese National Assembly adopted, Monday evening, a new gas code during a plenary session in the presence of the Minister of Oil and Energy.

The new law provides a new regime of validation of licenses and concessions, the modalities of exercise of the intermediate and downstream segments of the gas sub-sector, the tax and customs regime, the regulation of easements of gas transport and distribution facilities.

Also, The USTDA (U.S. Trade and Development Agency) and the Sovereign Fund for Strategic Investments (FONSIS), signed in 2020, a protocol granting the latter a grant of 1.2 million USD (over 700 million CFA francs). This grant from the U.S. Trade and Development Agency is intended to finance studies relating to the construction of the RGS S.A. pipeline network.

RGS S.A., a company created by PETROSEN, SENELEC and FONSIS, will transport gas from production sites to places of use (power plants, industries, domestic gas, etc.).

Regulatory Framework

- Petrosen: It is the State petroleum company that prepares and negotiates all petroleum conventions and contracts;
- Ministry of Petroleum and Renewable Energy: This department controls oil & gas operations carried out in Senegal;
- AGC: This agency is a joint committee set up to manage petroleum, mineral and fishing activities in the Common Maritime Zone between Guinea-Bissau and Senegal.
- The Strategic Orientation Committee for Oil & gas: This committee assists the President of the Republic and the Government in defining, supervising, evaluating and monitoring the implementation of the State policy on the development of oil & gas projects.
- National Committee for Hydrocarbons prepare, propose and implement the national strategy in terms of hedging against price risks on hydrocarbon imports

Local contents regulations

- Law 2019-04 of February 1st related to the local content in the Oil & Gas sector in Senegal.

Forms of contracts

Production sharing contract

It is a risk service contract whereby the State or a State Company awards exclusive hydrocarbon exploration and exploitation rights within a defined perimeter, to one or several qualified persons or companies.

The production sharing contract specifies the rights and obligations of the holder and of the State or a State Company, including the conditions for the sharing of the hydrocarbons produced and the recovery of petroleum costs incurred by the holder and its remuneration.

Service contract

It is a risk service contract for the exploration and exploitation of hydrocarbons whereby the State or a State Company grants to a qualified entity, which assumes the financial risks, exclusive rights for the exploration and exploitation of hydrocarbons within a defined perimeter. The oil company may be remunerated only if commercially exploitable reserves are discovered.

Government participation

The State, either directly or through a State Company, reserves the right to participate in all or part of the petroleum operations, by entering partnerships with the holders of conventions or service contracts. The conditions of participation will then be specified in the related convention or service contract.

The conditions of participation will then be specified in the related convention or service contract.

Taxation regime

The taxation of the petroleum operations is regulated in Senegal by the General Tax Code and the Petroleum Code.

Companies involved in the oil & gas industry are subject to taxes applicable to Senegal. However, they benefit from various exemptions with an objective to adapt to their activities and to attract new operators.

Holders of exploration permit are not subject to the following taxes:

- Employer payroll tax;
- VAT;
- Business licence tax;
- Tax on built real estate;
- Tax on non-built real estate;

- Customs duties on all items of plant, equipment and materials intended to be used solely for petroleum activities (ranging from 0% to 20%).

Holders of exploitation permit are not liable during the exploitation phase to the following taxes:

- Minimum corporate tax, during 3 years after the issuance of an exploitation permit;
- Tax on built real estate, during the investments phase, plus 3 years after the issuance of an exploitation permit;
- Tax on non-built real estate, during the investments phase, plus 3 years after the issuance of an exploitation permit;
- Customs duties on all items of plant, equipment and materials intended to be used solely for petroleum activities (ranging from 0% to 20%).

A convention or contract may provide additional exemptions other than those provided by the law and mentioned above. It could be an exemption of withholding taxes on services. Besides, the convention or contract may provide a stabilization clause to insulate the project from adverse changes to the legal and fiscal environment.

It is noteworthy that the General Tax Code and the Petroleum Code do not provide for a special status, from a tax perspective, for subcontractors. So, the latter will be taxed according to the ordinary law.

Finally, there is no deemed profit taxation in Senegal.

Law 2018-10 of March 30, 2018 has amended the Senegalese GTC and has provided new fiscal measures for the non-renewable energy area (oil & gas mainly). The changes are as follows:

- Possibility of deducting provisions, guarantees or funds established for the rehabilitation of mining sites or abandoned oil fields (if the sums concerned are domiciled near the Caisse des dépôts et consignations.
- Exemption of minimum CIT and Tax on built real estate for holders of mining and petroleum exploration licence during the research phase, development phase or investment phase throughout the duration of the research permit or the year following the first production, unless otherwise permitted by law. Companies holding mining concessions also benefits from the exemption within the 3 years following first production.
- Creation of a levy on consignment operations of petroleum products and hydrocarbon refueling of foreign-flagged vessels.
- Tax on real estate capital gains: regarding the transfer of rights attached to mining or petroleum titles, the tax is withheld and paid by the transferee on the amount paid to the transferor. For the sellers domiciled in Senegal, the amount paid in respect of the tax is, based on the payment receipt, deducted from the income tax and carried forward for a period of three years, without possibility of reimbursement.
- Specific provisions for companies benefiting from an agreement between Senegal and another State such as the Grand Tortue/ Ahmeyin agreement (a 0.02% contribution applies instead of the Local Economic Contribution on added value).
- Obligation for oil & gas companies to provide the tax administration with the list of their subcontractors, their address, the nature and the amounts of operations realised during the previous year.
- Extension of the tax on real estate capital gains to rights transfer pertaining to oil & gas.
- Obligation to assess the taxable income separately for each research, exploration and exploitation area for upstream activity.

Direct Taxation

Corporate Tax

Entities operating in the oil/gas sector are subject to corporate tax at a rate of 30%. The corporate tax rate is applied on the taxable profit determined after deductions of all expenses which are deductible against that income according to the General Tax Code.

In order to be deductible, the expenses must meet the following conditions:

- leads to a reduction of the assets;
- paid in the interest of the company;
- be regularly recorded in the accounts of the entity and justified by receipts;
- relate to the current fiscal year; and
- relate to a taxable income.

It should be noted that losses can be carried forward within a period of 3 years whereas depreciation recorded during a deficit year can be carried forward indefinitely. The CIT return and the annual financial statements shall be submitted latest by April 30 of each year. Two prepayments are made by February 15 and April 30, before a final payment is made by June 15.

As above-mentioned, Law No. 2019-13 dated 08 July 2019 creates an obligation for oil & gas companies to assess their taxable income separately for each research, exploration and exploitation area.

Royalties

Under the new petroleum code of February 2019, the holder of an operating permit or an exclusive hydrocarbon exploitation is subject to payment of a fee on the value hydrocarbons produced. The fee is calculated from the total quantities hydrocarbons products in the area operation and not used in operations.

The fee is payable, in whole or in part, either in kind or in cash, to the option of the state with each payment. In the event of delay in payment or delivery of the fee, the sums or quantities are increased by [1/1000] per day of delay.

The royalty rate applicable on crude oil or natural gas production are fixed as follow:

- Liquid hydrocarbons exploited shallow onshore: 9%
- Liquid hydrocarbons exploited shallow offshore: 9%
- Liquid hydrocarbons exploited deep offshore: 8%
- Liquid hydrocarbons exploited ultra-deep offshore:7%
- Gaseous hydrocarbons exploited onshore, shallow offshore, deep offshore, and ultra-deep offshore: 6%

Withholding taxes

Under the common tax law, any resident entity or permanent establishment shall withhold taxes on payments made to resident and non-resident, under certain conditions.

The applicable rates depend on the type of transactions and/or the country of residence of the suppliers (existence of a double tax treaty).

The withholding taxes applicable on payments are as follows:

- payment made to a local supplier for services rendered: 5%;
- payment made to foreign suppliers for services rendered or used in Senegal: 20%;
- payment of dividends: 10%;
- payment of bond interest: between 6% and 13%;
- Deposit or guarantee interest on accounts with a Senegalese bank: 8%;
- Payment of interest on loans: 16%.

Senegal has a Double Tax Treaty in force with 19 countries. Since 2015, Senegal has concluded a DTT with UK and Portugal in addition to the OECD convention on mutual administrative assistance on tax matters and the multilateral competent authority agreement on the exchange of country-by-country reports.

Capital gains tax (CGT)

The 30% corporate income tax rate is applicable on the capital gains from disposal of shares. The capital gains are equal to the difference between the sale price (arm length price) less the acquisition value.

Property Tax

Tax on built real estate is due by owners or usufructuaries of premises or assets permanently attached to the ground. The applicable rate is 5% for common buildings and 7.5% for factories and industrial premises. Tax on non-built real estate: it is due by owners or usufructuaries of lands at
5%.

E&P companies are exempted from both taxes during the exploration and investment phases, plus 3 years after the issuance of the exploitation permit.

Transfer pricing

The transfer pricing regulation has been very recently introduced within the Senegalese law, with the most recent version of the General Tax Code, i.e. law 2013-31 dated December the 31st, 2012.

It applies to intercompany transactions or transactions with a company located in non-cooperative States or territories or with privileged taxation regime. There is no practice regarding the legislation, but only the general guidance provided within that law.

The regulation globally corresponds to the OECD requirements standards, i.e. identifying related party transactions, choosing the suitable transfer pricing method and preparing the documentation to support the selection of such method. The documentation should be available upon first request of the tax authorities. Otherwise, the tax authorities may set the prices themselves and apply the correlative tax reassessment accordingly.

Law 2018-10 of March 30, 2018 has provided new obligations regarding to transfer pricing:

- Simplified transfer pricing declaration: this declaration must be filed along with the financial statements and CIT return, on April 30 of each year, at the latest.
- Country by country report: this declaration must be filed in a dematerialized form, within twelve months following the closing of the fiscal year.

Thin capitalisation

There is no limitation of total debt on equity.

However, there is a limitation of deductibility, for corporate tax purpose, of the interests paid or recorded for a loan granted by a shareholder (directly or via other entities).

Indeed, the interests are deductible only if the following 3 conditions are met:

- the share capital of the company receiving the loan shall be, beforehand, fully paid up;
- the deductible interests are calculated based on the amount of the loans within the limit of the share capital;
- the interest rate shall not exceed the base rate of the Central Bank (3.54% for FY 2017) plus 3 percentage points (i.e. 6.54%).

The deduction of the interests is organised as follows:

I. The deductibility of the interests payable to a related party is limited to interests on loans that meet the following criteria

   - the loan should not exceed 15 times the paid share capital of the borrower
   - the loan should be within the limits of the base rate (3.5437% in 2017) plus 3 points
   - the loan should be within a maximum of 15% of the ordinary profits, adjusted upwards by the depreciation, provisions and the concerned interests, the calculation of those limits being made for all the interests paid to all related parties.

   1. Besides, the deductibility of all the interests (payable to related or unrelated parties) is limited to 15% of the ordinary profits, increased by the depreciation and provisions and the concerned interests. For this calculation, the non-deductible interests due to related parties are excluded and interest incomes deducted ("net interests"). This second 15% limitation does not apply if it is proved that the ratio of net interests of the group is equal or higher to its own net interest ratio. The group ratio (consolidated level figures of the group) is equal to the interests due to unrelated parties on the ordinary profits, increased by the depreciation and provisions and the interests payable to unrelated parties. In such case, the interest deductible is calculated in applying the group ratio. This limitation does not apply in case the annual interests are lower than XOF 50,000,000 subject that they are not due to companies established in a privileged taxation regime (taxation below half of the taxation in Senegal).

These rules are new (further the amendment of the General tax code issued from the law no.2018-10 dated on March 2018). This law has provided a definition of the concept of interest, which means any expense related to debt securities of any kind, including payments done in return of the granting of a pledge for the repayment of a debt obligation, that would be considered as deductible, unless application of this provision.
This new rule leads to a wide acceptance of the concept of interest, from basic remuneration for loan. It now includes any expenditure for intragroup financing.

Indirect Taxes

Value added tax (VAT)

The standard rate of VAT is 18%. There is a 10% reduced rate, which applies to hotel activities. The 18% rate is applicable to oil & gas companies. Legally, holders of exploration permit are exempted from VAT during the exploration phase. In addition, PSAs and service contracts often provide VAT exemption.
VAT returns must be filed, and the associated payments made within 15 days after the end of the month within which the tax event occurred.

Customs and Excise Duties

The customs duties vary between 5% and 35% depending on the type of goods. Minor royalties shall be added with total percentage of 2.9%. Legally, customs are exempted during the research and development phases for equipment intended to be used solely for petroleum activities. PSAs usually provide such exemption.

Excise tariffs are as follows: XOF 21,665 per hectoliter for premium gasoline / XOF 19,847 per hectoliter for regular gasoline / XOF 3,856 per hectoliter for canoe gasoline / XOF 10,395 per hectoliter for diesel fuel.

Other Taxes

Personal income tax (Pay-as-you-earn tax)

- Senegal operates a straightforward PAYE system, in which the employer withholds monthly from each employee's gross taxable remuneration the tax due.
- Indeed, resident and non-resident individuals earning revenues from employment in Senegal (subject to any double tax treaty in force) are subject to monthly taxation.

The amount due is calculated by applying a progressive tax scale going from 0% to 40%. The income bracket put under the 40% rate is easily reached but there is a possibility to benefit from a tax reduction due to dependent family.

Minimum Withholding Tax

Any employee is liable to a minimum withholding tax payable monthly and calculated on an annual basis.

The tax due ranges between XOF 900 and XOF 36,000 annually.

If the spouse of an employee is unemployed, the latter must pay then for himself and for his/her spouse (limited to one spouse).

Employer tax

Employers are subject to a 3% tax applicable on the total gross taxable salaries paid to the employees.

Social security contributions

The social security contributions are exclusively borne by the employer. The maximum monthly basis of calculation is XOF 63,000.

The cumulative rates are as follows:

Sector	Rate of contributions	Capped basis
Family	7%	XOF 63,000
Industrial accident / Occupational disease	1%, 3% or 5% depending on the activity of the company	XOF 63,000

Pension contributions

The pension contributions include a part borne by the employer and a part borne by the employee:

Regime	Employer part	Employee part	Capped basis
General	8.4%	5.6%	XOF 360,000
Executive	3.6%	2.4%	XOF 1,080,000

Medical coverage

The employer shall subscribe for all employees a medical coverage. The level of coverage depends on the type of agreement concluded with the dedicated organisation.

Usually, the employee is reimbursed up to 80% of his medical expenses, even though the law provides a range between 50% and 80%.

The monthly rate is 6% to be levied on a base between 60,000 XOF and 250,000 XOF, for both the employee and the employer.

Oil Field Service (OFS) Companies

OFS companies are not subject to the same taxation regime as E&P companies. They do not have a special tax status therefore they are taxed in accordance with the ordinary law, unless a PSA for instance provides an exemption.

Tax audits

The tax administration has its own agenda to conduct tax audits, but we can confirm that tax audits and tax reassessments are frequent. In practice, an objection letter is transmitted to the tax administration within the statutory deadline and then meetings are scheduled to discuss items that need more clarification.

Power and Utilities Sector

Brief overview of Power and Utilities development in Senegal

The Power and Utilities industry in Senegal has been experiencing a crisis for several years. This had led to dysfunctions throughout the sector despite various strategies and reforms implemented and significant financial resources mobilized.

Since energy plays an important role in the economic and social development of any country, Senegal cannot achieve its full economic growth without the energy sector achieving optimal performance.

The Government has therefore decided to make power sector development a key component of its Plan Sénégal Emergent, which aims to make Senegal an emerging economy by 2025. This involves the provision of diversified energy services including renewable energies, in sufficient quantities and at competitive prices.

Fiscal Regime and taxation regime

The Power and Utilities companies benefits from the following fiscal measures:

- 30% Companies Income Tax (“CIT”) basis reduction for companies that produce locally and exclusively to produce renewable energies.
- Exemption from VAT on delivery of supplies intended to produce renewable energies (list of materials not fixed yet by decree).
- Exemption from VAT on deliveries of renewable energy by their producers.

Apart from this, the standard regime is applicable.

Tax audit

Companies in the power and utilities industry are subject to the same tax audit procedures.

Regulatory Framework

The Regulatory Commission of the Electricity Sector, an independent authority, is responsible for the regulation of the activities of production, transmission, distribution and sale of electrical energy.

The National Agency for Renewable Energies has been created to take charge of the promotion and development of these alternative energies, in all their forms: solar power, wind power, small hydropower.

Forms of contracts

Production licence

Any company intending to produce electrical energy by any means must first obtain a licence from the Minister of Energy for this purpose.

Distribution concession

Any company intending to distribute electrical energy by any means and for any purpose whatsoever, must first obtain a licence from the Minister of Energy for this purpose.

Apart from production for self-consumption, the activities of production, distribution and sale of electricity from renewable energies carried out by a company are subject to a concession or licence. A licence is also required for all the operations related to industrial processing, the importation, exportation, transportation, storage and distribution of biofuel.

Sale licence

Any company considering selling electrical energy must first obtain a licence from the Minister of Energy for this purpose. The licence determines the territorial scope where applicable, the duration and the obligations related to public service that binds the licence holder. It also indicates the type of electrical energy and the consumption that the licensee can serve.

Exclusive concession of bulk purchase, transportation and wholesale

SENELEC (Senegalese Electricity Company) is the only company authorized to carry out a bulk purchase, transportation and wholesale activity of electric power throughout the national territory, for a period defined by the concession contract.

Connection contracts (renewable energies)

A connection contract mentioning the technical and financial terms and conditions is mandatory between the operators of the installations and the network operators.

Local contents regulations

- Law 98-29 of April 14, 1998 related to the electricity sector
- Law 2010-21 of December 20, 2010 establishing a framework for renewable energies
- Law 2010-22 of December 15, 2010 establishing a framework for the sector of biofuel

Incentives in the industry

Renewable energies

The acquisition of materials and equipment for research and development in the field of renewable energies benefits from fiscal incentives.

The acquisition of materials and equipment for the production, exploitation and self-consumption of renewable energies benefits fiscal incentives.

The acquisition of materials and equipment for the production for self-consumption of renewable energies benefits from total exemption (VAT and customs duties).

Biofuel

The acquisitions of equipment, seed and seedlings for the cultivation and exploitation of biofuels are exempt from VAT and custom duties. Revenues from biofuel operating are tax-exempt, up to a maximum of 5 years.

These benefits are reserved for companies whose production is intended for the national market. Companies producing for the international market benefit from the investment code incentives.

Either of the two.

South Africa

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Oil and Gas Sector

Brief overview of Oil & Gas industry in South Africa

South Africa comprises 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, there have been exciting recent developments:

South Africa currently has four upstream regions of interest:

- South Coast: This is the only producing area in South Africa.
- Orange 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: There has been significant interest in onshore unconventional gas resources

South Africa had proven oil reserves of 15 million barrels at the beginning of 2018. In addition, proven natural gas reserves have been depleted to almost nothing cubic feet. At present, South Africa does not have significant proven oil & gas reserves. Production of oil & gas are derived from coal and imported crude oil.

The most pertinent upstream development to note in the last 20 years occurred in 2019 and 2020 with the Brulpadda gas and Luiperd gas discovery respectively. The discoveries made off the south coast of Mossel Bay, could be a 'game-changers' for the South African economy with "The discovery of gas condensate fields indicate that it is more than 2 million barrel discovery.

South Africa imported approximately 183 gigajoules in 2019 along the Rompco pipeline that links the Mozambique gas fields of Pande and Temane to South Africa. Mozambique has the capacity to significantly ramp-up its exports to South Africa as it brings online its vast offshore reserves.

The relative under-utilization of gas is a result of the abundant coal resources in the country led to 90% of the electricity being produced from coal. South Africa also produces petroleum product from coal (Coal to Liquid.

However, the relative high cost of coal produced electricity and petroleum in financial and environmental terms has seen South Africa make attempts to diversify its energy mix, with the country looking at transitioning to cleaner fuels, such as wind and solar. There is also an intention to have LNG onshore regasification sites at either Richards Bay or Coega but as yet is in the feasibility stage..

South Africa's state-owned port, rail, and pipeline company Transnet is planning a multi-million dollar liquefied natural gas (LNG) storage and regasification terminal at the port of Richards Bay. The facilities were expected to be operational by 2024. However, the target timeline was dependent on Transnet being able to secure the necessary regulatory approvals and funding. The feasibility study of this project will also investigate repurposing existing Transnet pipelines to carry natural gas to inland markets. Virtual pipelines via rail and road, scheduled to be operational by 2024, are also part of the plan. The aim of this project is to import gas from Mozambique since Richards Bay is the closest South African port to Mozambique.

Another possible option is an LNG terminal at Coega which the Minister for Mineral Resources and Energy has urged investors to pursue investment opportunities in the "proposed liquefied natural gas (LNG) hub at the Coega Special Economic Zone (SEZ)" Eastern Cape.

Should offshore exploration and onshore shale gas exploration prove to be successful, South Africa will have a localised supply of oil & gas to enable and promote the diversification of the country's energy mix.

South Africa has significant potential for unconventional gas discovery in the form of Coal Bed Methane and Shale Gas, for which it is ranked 8th and 12th in the world, respectively.

The government's decision to proceed with shale gas development contradicted a two-year socio-economic and environmental study by the Council for Scientific & Industrial Research analysing the potential impact of shale gas development in the region. The conclusions of the study highlighted major issues with water scarcity and overstated local socio-economic benefits.

Downstream South Africa has just over 4200 retail sites with the market being dominated by the big 6: Engen, Astron Energy/Caltex, BP, Shell, Total and Sasol.

Refining capacity particularly for low sulphur diesel has not been able to be met by the ageing refineries, thus leading to increasing imports of refined product. The ageing refinery utilisation is low compared to global standards. The average age of the South African refineries is 50 years

The Refinery capacity in South Africa is 708,000 bbls per day, however without increase capital expenditure to improve utilisation and compliance to future Cleaner fuel standards the refining output will remain between 70-80%. Both Engen (Enref) and Shell (50% partnership with BP) have indicated that they would be interested to stop /sell their refineries.

Significant new developments in South Africa

South Africa was in some form of COVID-19 lockdown for a total of 279 days in 2020. PwC estimates a net loss of 1.3 million jobs during the year, resulting in the expanded unemployment rate increasing to above 40% of the labour force. There were some green shoots during the fourth quarter, in particular an increase in export revenues and mineral sales due to favourable international metal prices and exchange rate movements. Nonetheless, the economy contracted by an estimated 8.8% in 2020 – the largest recession on record.

The South African economy is expected to see positive GDP growth in 2021. However, much of this growth is due to the base effects from the large contraction in economic activity last year – especially 2020Q2. PwC's baseline forecast is for GDP growth of 3.4% in 2021. This includes assumptions of a third wave of COVID-19 infections, the negative impact of continued electricity load shedding, as well as an uneven recovery pattern amongst the country's key trading partners.

Fiscal regime

The fiscal regime applicable to the oil & 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, the taxation of oil & gas companies, as defined, is regulated by the Tenth Schedule of the Act ('the Tenth Schedule'), which provides for specific treatment of various items applicable to these companies. 'Oil & gas companies' either hold an oil & gas right (as defined) or engage in exploration or production in terms of any oil & gas right.

In the 2019 Budget Speech, it was mentioned that the oil & gas tax regime will be reviewed, but no amendments (apart from the Draft Bill mentioned below) have been published to date.

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 & gas within 'South Africa' as defined.

Significant changes expected in the overall oil & gas regime in South Africa include the Draft Upstream Petroleum Resources Development Bill, 2019 that was out for public comment until 21 February 2020. There is currently, however, no indication of when the Bill will be enacted.

- The main clauses of interest refer to the "carried interest" allocated to the State in an exploration or production right, which interest vests exclusively for the benefit of the State and where the costs of which are borne by the carrying holder as contemplated. The State through PetroSA, the National Oil Company, will get a right to a 20 percent carried interest. With this interest PetroSA will appoint two or more representatives to the joint operating committee of the exploration or production operation to represent the State, as well as corresponding voting rights.
- Another significant clause to investors is that every exploration or production right must have a minimum of 10% participating interest by black persons which must include economic interest plus corresponding percentage of voting rights .
- Royalties, production bonus and a petroleum resource rent tax in respect of the development of petroleum resources will be determined and levied by the Minister of Finance in terms of an Act of Parliament.

Regulatory Framework

The key regulators in the oil & 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 National Nuclear Regulator (NNR) was established to regulate nuclear energy in terms of the National Nuclear Regulator Act 1999.
- The Petroleum Agency South Africa (PASA), one of the Central Energy Fund (CEF) subsidiary companies, manages the promotion and licensing of oil & gas exploration, development and production in South Africa including the coastal areas offshore South Africa as part of creating a viable upstream oil & gas industry in the country. PASA could divest its operations to the 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, and include:

- Reconnaissance permit – Permits are typically applicable for 12 months on a non-exclusive basis;
- Technical cooperation permits (TCP) – 12 months exclusive desktop study, exclusive rights to apply for exploration rights;
- Exploration rights – Granted in respect of a specified area. These are typically exclusive, transferable, and extendable 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, that are typically exclusive, transferable, extend for 30 years, and 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 .

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 & 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 & gas.

Local Content Regulations

South Africa published a new Mining Charter which came into effect on 1 March 2019. It specifies regulations for holders of mining rights (including production rights for oil & gas companies) which regulations include, but are not limited to the following:

- A minimum of 30%ownership needs to be held by Historically Disadvantaged Persons ("HDPs"). The company must further ensure that of that 30% a minimum of 5% is held by an Employees Share

Ownership Scheme, 5% held by HDPs who are women and another 5% held by the local community. Companies have 5 years to ensure that they meet these compliance requirements; (Note that the New Upstream Petroleum Resources Development Bill will replace this for upstream oil & gas exploration once enacted).

- Each year, multinational suppliers of goods must contribute 1% of annual turnover generated from local mining companies towards a social development trust fund.

Management levels for mining companies are expected to be as follows:

I. The Board must comprise of at least 50% HDPs, of which 20% must be women

II. Executive management must comprise of at least 50% HDPs, of which 20% must be females;

III. Senior management must comprise of at least 60% HDPs, of which 25% must be females;

IV. Middle management must comprise of at least 60% HDPs, of which 25% must be females;

V. Junior management must comprise of at least 70% HDPs, of which 30% must be females;

VI. The company must ensure that not less than 1.5% of total employees are HDPs with disabilities.

It is encouraged that medium and larger mining organisations are to support smaller BEE companies by:

I. Purchasing 70% locally manufactured goods from local black suppliers (44% of the 70% is to come from black economic empowerment "BEE" compliant suppliers and 5% from companies owned and controlled by women or youth);

II. Obtaining 70% of R&D services from South African based entities.

III. Obtaining 80% of services from local black suppliers.

Additionally, in order to acquire a new mining right, there is a requirement for 5% of the shareholding of the mining company to be held by "qualifying employees", likely to be held through an Employee Share Scheme.

Taxation regime

gains, whereas non-resident entities are taxable on their South African 'source' income and certain specified capital gains, to the extent that these are not exempt in terms of a double taxation treaty.

'South Africa' is specifically defined for these purposes and includes the territorial sea and areas beyond the territorial sea within which South Africa may exercise sovereign rights or jurisdiction regarding the exploration or exploitation of natural resources.

Qualifying non-capital expenditure that is incurred in the production of taxable income is allowed as a deduction for income tax purposes.

The South African taxation of 'oil & gas companies' is determined in terms of the above principles, but is also further regulated by the Tenth Schedule of the Income Tax Act 58 of 1962 ("Tenth Schedule") as summarized below. The Tenth Schedule defines an 'oil & gas company' as any company that either holds any oil & gas right or engages in exploration or 'post-exploration' activities in terms of any oil & gas right.

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 & gas companies in respect of their oil & gas income, shall not exceed this.

No branch profit remittance tax applies.

Taxation in South Africa operates on an entity basis and hence there is no fiscal unity or other group tax system. However, certain transactions can be undertaken within a 'group of companies' as defined (typically common 70% equity ownership) on a tax neutral basis.

Direct taxes

Petroleum / oil taxation

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

'Oil & gas companies' either hold any oil & gas right (as defined), or engage in exploration or production in terms of any oil & gas right.

Oil & gas deductions

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

- All exploration / post-exploration (previously 'production') expenditure and losses are deductible from the company's oil & gas income (other than certain expenditure in respect of the acquisition of a

right). References to post-exploration expenditure include expenditure incurred after the completion of the appraisal phase, to the extent that these processes are preliminary to refining.

- In addition, the following additional deductions are available against oil & gas income (also excluding the above expenditure in respect of acquisition of a right):
  - 100% of capital exploration expenditure in terms of an oil & gas right; and
  - 50% of capital post-exploration expenditure in terms of an oil & gas right.
- As a general rule, any assessed losses in respect of exploration and post-exploration losses are ring-fenced against oil & gas income and income derived from refining gas, with only 10% of the remaining losses being able to be offset against other income. The excess losses may be carried forward to a future year.

Oil & gas income is defined as the receipts and accruals derived by an oil & gas company from exploration or post-exploration (processes preliminary to refining) in terms of any oil & 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 & gas companies with reference to the functional currency of the company.

Disposal of oil & gas rights

Special rules apply to disposals of oil & gas rights, which allow a disposing oil & gas company and the purchasing company (a new company or an existing oil & gas company) to agree in writing that one of the following treatments will apply to the disposal instead of the normal capital gains tax treatment, subject to various criteria and requirements:

- Rollover treatment, in terms of which the disposing company is deemed to dispose of the right at its tax cost. The acquiring company is also deemed to acquire the right for the same amount.
- Participation treatment, in terms of which the gains are treated as ordinary revenue, with the acquiring company obtaining an immediate corresponding deduction against its oil & gas income.

Fiscal stability

The Minister may enter into a binding agreement with any oil & gas company in respect of an oil & gas right held by that company (or to be acquired), which agreement will guarantee that the provisions of the Tenth Schedule (as on the date of the agreement) will continue to apply in respect of that right for as long as it is held. The oil & gas company may unilaterally terminate the above agreement. Further detailed provisions apply in this regard.

Note that no fiscal stability agreements have been signed in the last number of years.

Capital gains tax (CGT)

For companies, 80% of gains are included in taxable income and taxed at the standard corporate rates. Refer special dispensation on disposal of oil & gas rights above.

Non-residents are only subject to capital gains tax on certain specific disposals, as follows:

1. Immovable property or any interest or right of any nature related to immovable property situated in South Africa;
2. Equity shares in a company when 80% or more of the market value of those equity shares, is attributable directly or indirectly to immovable property in South Africa; and
3. The assets of any permanent establishment of a non-resident in South Africa. A permanent establishment is generally considered to include a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Note that the interest or right per (1) above includes a prospecting right, mining right, exploration right or production right as per the Mineral and Petroleum Resources Development Act 28 of 2002.

In terms of compliance, the capital gains from a sale of the above is declared as part of the income tax return of the non-resident and not as a separate return.

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, that is, the current legislation simply requires that the quantum of debt and interest

rates are at arm's length. This requires a functional analysis to be performed to support the appropriateness of the taxpayer's arm's length debt assessment as well as a comparability analysis taking into account the quantitative and qualitative factors that third-party lenders would consider when making lending decisions.

Currently, there is no safe harbour for thin capitalisation purposes .

Withholding tax (WHT)

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

Royalties

A 'royalty' withholding tax of 15% applies to payments to a non-resident for the use of certain 'intellectual property' (as defined) in South Africa or by a South African resident, as well as for payments for certain specific, technical, industrial or commercial knowledge or information or related assistance.

Dividends

A dividend withholding tax of 20% applies to any dividend paid by a South African tax resident company or foreign company whose shares are listed on the JSE. Dividends paid by an "oil & gas company" as defined that are derived from "oil & gas income" as defined are however subject to dividends tax at 0%.

Interest

A 15% withholding tax applies to South African sourced interest payable to non-residents . The tax is reduced to 0% on any interest paid in respect of loans applied to fund "exploration" and "post-exploration" expenditure.

Services

South Africa does not withhold tax on service fees, however, certain service fees are reportable to the revenue authority if they exceed or are expected to exceed R10 million.

Disposal of immovable property

Sale of an interest in an oil & gas right by a non-resident may be subject to withholding tax of between 7.5% and 15% of the amount payable by the purchaser. This is an advance payment and not a final tax (if a return is filed by the non-resident) and may be waived or reduced by the Commissioner on application.

Profit repatriation issues

South Africa has a system of exchange controls, which regulate the flow of funds into and out of the country. Various payments to non-residents require prior exchange control approval. Treasury is in the process of gradually replacing the current exchange control regime with a new Capital Flow Management System.

In terms of the existing regime, local entities that are oil & gas right holders and whose sole trade relates to exploration and production (i.e. extraction only) may open and conduct Customer Foreign Currency accounts without any restriction on the nature of transactions passing over the account, provided that all reporting requirements are adhered to.

Dividends and disposal proceeds on shares should be able to be remitted from the country provided the share certificates were properly endorsed as 'non-resident'. Interest on loans can be remitted, subject to certain limits on the rates, provided the loan has been approved.

Capital loan repayments require prior approval, but this is usually a formality.

Double Tax Treaties (DTT)

South Africa has 79 double tax treaties currently in force.

Registration of foreign companies

A foreign company is required to register as an 'external company' in terms of the Companies Act No 71 of 2008, with the Companies and Intellectual Property Commission (CIPC), within 20 days of commencing to 'conduct businesses in SA.

Registration as an external company does not result in the creation of a separate entity – it is rather the statutory registration of the foreign company for South African company law purposes. Registration results in the requirement to submit an annual company law return, with abridged details of turnover etc.

Indirect taxes

Value-added tax (VAT)

There is no specific VAT dispensation for oil & gas companies.

The VAT rate was increased from a flat rate of 14% to 15% effective 1 April 2018. VAT is charged 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 include basic foodstuffs, specified goods utilized for farming purposes, the sale of an enterprise as a going concern, fuel subject to the fuel levy, petroleum oil and oils obtained from bituminous minerals (known as crude), illuminating kerosene for illuminating or heating, and deemed supplies by welfare organisations.

Every taxable person (both resident and non-residents) engaged in enterprise activities in South Africa as defined is required to register as a vendor. 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 and may therefore not require non-resident persons to register for VAT.

Imports of goods and services into South Africa are liable to import VAT. However, in the case of services no import VAT is payable if the services are used wholly for making taxable supplies. The importation of (inter alia) fuel levy goods, crude and illuminating kerosene (for illuminating or heating) is exempt from VAT.

VAT returns must be submitted on a monthly or bi-monthly basis depending on turnover. VAT payments are due by the last business day of the first month commencing after the end of the tax period where filing and payment is made electronically.

Custom duties/Import tariffs

Ordinary customs duties are charged on importation of goods into South Africa which range between 0% and 20% (other industries than tobacco and textiles). The import duties may also include anti-dumping and countervailing duties of up to 150%.

No customs duties are charged on trade between South Africa and Botswana, Lesotho, Namibia, and Swaziland as these five countries constitute a Southern African Customs Union (SACU), provided the goods in the trade 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.

Thin capitalisation

The Carbon Tax Act No. 15 of 2019 (“Carbon Tax Act”) became effective on 1 June 2019. Carbon Tax, at a rate of R127/tCO_2e, must be levied in respect of the sum of the scope 1 greenhouse gas (“GHG”) emissions of a taxpayer. The carbon tax rate will increase by the amount of the consumer price inflation (“CPI”) of the preceding tax period, plus two percent until 31 December 2022, thereafter, only by CPI of the preceding tax period. The GHG emissions resulting from fuel combustion, industrial processes and fugitive emissions expressed as a carbon dioxide equivalent (“CO_2e”) will be taxable. A person conducting an activity in South Africa resulting in GHG emissions equal to and/or above the thresholds as provided for in Schedule 2 of the Carbon Tax Act will be subject to carbon tax.

Taxpayers can leverage off tax-free allowances that will reduce their tax obligation. These allowances will be administered as rebates, in terms of Schedule 6 of the Customs and Excise Act. The allowances are highlighted below as follows:

- Basic Tax Free / Allowance for fossil fuel combustion – 60%;
- Allowance for industrial process emissions – 10%;
- Allowance in respect of fugitive emissions – 10%;
- Trade exposure allowance – 0% to 10% (capped at 10%);
- Performance allowance – 0% to 5% (capped at 5%);
- Carbon budget allowance – 5 %; and
- Carbon Offset allowance – 5% or 10%.

Multiple allowances can be granted to the same taxpayer. However, the total may not exceed 95%.

Persons and/or Data Providers operating within the Republic of South Africa, who conduct activities resulting in GHG emissions equal to or above the prescribed thresholds, as provided for in Annexure 1 of the National Greenhouse Gas Emission Reporting Regulations (“NGER Regulations”) as well as Schedule.

2 of the Carbon Tax Act, will be considered as a taxpayer under the Carbon Tax Act and as a Data Provider under the NGER Regulations.

A taxpayer will be liable for carbon tax if it conducts an activity in the Republic resulting in GHG emissions equal to or above the threshold determined by matching the activity listed in the column 'Activity/Sector' in Schedule 2, with the number in the corresponding line of the column "Threshold". Section 3 of the Carbon Tax Act, outlines the persons who are subject to carbon tax, in accordance with Section 3, a person who is subject to carbon tax as a taxpayer for the purposes of the Carbon Tax Act and liable to pay an amount of carbon tax calculated as contemplated in Section 6 in respect of a tax period as specified in Section 16, if that person conducts an activity in the Republic resulting in greenhouse gas emissions that either meets or exceeds the threshold determined by matching the activity listed in the column "Activity/ Sector" in Schedule 2 with the number in the corresponding line of the column "Threshold" of that table.

Carbon Tax must be levied in respect of the sum of Scope 1 GHG emissions of a taxpayer, in respect of a tax period expressed as the CO_2e of those greenhouse gas ("GHG") emissions resulting from fuel combustion, industrial processes and fugitive emissions

Thin capitalisation

In terms of the current phase of the Carbon Tax Act, 2019 (i.e. 2019 to 2022), taxpayers are eligible for a 5% carbon budget allowance once they participate in the carbon budget system on a voluntary basis. These voluntary carbon budgets have been allocated for the period 2016 to 2020, and they ceased to exist on 31 December 2020, at the same time as the lifespan of the current pollution prevention plans ("PPP") under the PPP Regulations.

DEFF is, in pursuit of the above, preparing the carbon budget allocation methodology to be applied for the mandatory carbon budget system which is anticipated to commence with the second phase of the carbon tax on 1 January 2023. The methodology will be consulted on with stakeholders and finalised before the end of March 2021. Once the proposed Climate Change Bill is promulgated, the new Carbon Budget Regulations will be linked with the mitigation plan/pollution prevention plan requirements.

DEFF are encouraging companies to optionally use the period between 1 January 2021 and 31 December 2022, as a pilot period to pilot the linking of the carbon budgets and mitigation plans with the view that, by the time the carbon budgets become mandatory on 1 January 2023, they would have been using the new system already.

Trade Exposure Allowance, Performance Allowance and Carbon Offset Allowance

On 19 June 2020, the Regulations under Section 19(b) of the Carbon Tax Act, governing the Trade Exposure Allowance under Section 10 of the Carbon Tax Act were promulgated, under *Government Gazette 43451.* Section 10 of the Carbon Tax Act sets out the methodology for calculating the trade intensity of a sector which informs the level of the trade exposure allowance that a sector will qualify for, as determined by the Minister of Finance by Regulation. The trade exposure allowance aims to assist companies that may face potential adverse impacts on their competitiveness and companies can qualify for an allowance up to 10% of their total GHG emissions

On 19 June 2020, the Regulations under Section 19(a) of the Carbon Tax Act for greenhouse gas emissions intensity benchmarks for purposes of governing Section 11 for the Performance Allowance were promulgated, under *Government Gazette 43452*. Section 11 of the Carbon Tax Act sets out the formula to be used by taxpayers to calculate the applicable performance allowance. For a tax period, taxpayers that perform better than an approved sector GHG emissions intensity benchmark will qualify for a performance allowance. The performance allowances seeks to encourage firms to reduce the carbon intensity of their production processes relative to their peers and promote the competitiveness of local products

On 29 November 2019, the Carbon Offset Regulations were promulgated under Section 19(c) of the Carbon Tax Act, for purposes of governing Section 13 of the Carbon Tax Act, under *Government Gazette 42873.* In accordance with Section 13 of the Carbon Tax Act: *"a taxpayer must reduce the amount in respect of the carbon tax for which the taxpayer is liable in respect of a tax period by utilising carbon offsets as prescribed by the Minister."* The reduction of the liability for the carbon tax allowed in terms of Section 13(1) must not exceed so much of the percentage of the total greenhouse gas emissions of a taxpayer in respect of a tax period, as detailed in Schedule 2 of the Carbon Tax Act.

It is important to note that the Act aims to encompass and target non-renewable energy sources or colloquially known as "dirty energy". Renewable energy and renewable projects will not be liable for carbon tax. Circumspection should be exercised when determining which renewable projects will qualify, as the Carbon Offset Regulations mandate strict requirements that ought to be fulfilled in this regard.

Important compliance considerations

Data Provider registration ought to be made at the DEFF and a Carbon Tax Licensing Application made at the South African Revenue Service (“SARS”). Submission of Annual GHG emissions made to DEFF by 31 March of each year and submission of Environmental Levy Account (Carbon Tax Return) to SARS by 31 July of each year.

Other taxes

Personal income tax

Non-residents are subject to tax on South African ‘source’ income unless exempt in terms of a double taxation treaty.

South African employers and certain non-resident employers are required to register for and withhold employees’ tax (‘Pay-As-You-Earn’, or PAYE’) from remuneration paid to employees in South Africa. The employee's tax rates are charged on a sliding scale up to 45%.

Social Security Contributions

South Africa does not have social security per se However skills development levies ("SDL") and Unemployment Insurance Fund ("UIF") contributions are payable. The SDL is 1% of remuneration payable by the employer. UIF contributions are set at 2% of remuneration, 1% payable by the employee and 1% payable by the employer subject to an annual limit of R3,569.28 in total per annum per employee.

In addition to SDL and UIF, there is the requirement to contribute to (Compensation for Occupational Injuries and Diseases Act) COIDA in specific circumstances.

Property taxes

Transfer duty is levied on the acquisition of any immovable property in SA as follows, and is payable by the purchaser, determined on the value of the property:

- R0 to R1,000,000: 0%
- R1,000,001 to R1,375,000: 3% on the value above R1,000,000
- R1,375,001 to R1,925,000: R11,250 plus 6% on the value above R1,375,000
- R1,925,001 to R2,475,000: R44,250 plus 8% on the value above R1,925,000;
- R2,475,001 to R11,000,000: R88,250 plus 11% on the value above R2,475,000; and
- R11,000,001 and above : R1,026,000 + 13% of the value exceeding R11,000,000

Transfer duty is not due where the transaction attracts VAT. Monthly municipal rates and taxes are usually payable on fixed property, depending on where this is situated.

Property means land and any fixtures thereon and includes, but is not limited to:

a. Real rights in land, excluding rights under mortgage bonds or leases;
b. Rights to minerals or the rights to mine for minerals including leases or sub-leases to mine for minerals;
c. A share or member’s interest in a "residential property company" as defined;
d. A contingent right to residential property or share or member’s interest in a residential property company; or
e. A share in a share block company.

The disposal of shares in a property-rich company by a non-resident will constitute the disposal of interest in immovable property, which may be subject to South African capital gains tax. A withholding tax of 7.5%, 10% or 15% may be levied on the transaction, but this will not be a final tax. The final tax payable to SARS will be determined when the non-resident submits their tax return.

Securities Transfer Tax

Securities Transfer Tax (STT) applies on the transfer of shares and other securities, at 0.25% on the higher of consideration or market value of the securities transferred.

Donations tax

Disposals of assets below their market value may constitute a donation on which donations tax is payable at 20% on a lifetime limit of R30 million and at 25% thereafter, subject to various requirements and exemptions.

Levies

Various additional levies exist, such as air passenger tax, vehicles emissions tax, and a fuel levy.

Taxation of Oil Field Service (OFS) Companies

OFS are subject to the rules of the normal income tax regime in South Africa and do not qualify for the special dispensation that is available to oil & gas companies in

terms of the Tenth Schedule of the Income Tax Act.

Deemed Profit Taxation

South Africa does not have any deemed profit taxation. Income is taxed at 28% of taxable income (calculated in accordance with the Income Tax Act).

Reportable Arrangements

SARS' list of reportable arrangements includes an arrangement relating to certain services rendered by foreign persons. The services comprise consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical, or training services rendered to a resident person or to a permanent establishment of a non-resident person in South Africa. In order to be reportable, the non-resident person (or an employee, agent or representative of that person) must be or must be anticipated to be physically present in South Africa in connection with or for the purpose of rendering the services. The services are only reportable if they exceed or are expected to exceed R10 million in aggregate.

Tax incentives

Regime for oil & gas companies

'Oil & gas companies' enjoy special tax treatment, as set out above.

Capital / special allowances

Specific capital allowances apply depending on the assets and their usage. Refer above for deductibility of capital exploration / post-exploration expenditure by oil & gas companies.

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 seaports, to which certain VAT and customs dispensations apply 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 also qualify for a reduced tax rate of 15%

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 considers the "monthly remuneration" of "qualifying employees". There are various requirements for an employee to be considered as a "qualifying employee", including a limited 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.

Compliance requirements

South African companies and all non-resident companies' trusts or other juristic persons deriving South African sourced income (with the exception of certain exempt income) are required to register for corporate income tax purposes. The resultant compliance obligations include the following:

- The filing of three provisional tax returns and related payments, on a 6-monthly basis - the first within 6 months after the commencement of the tax year, the second on the last day of the tax year, and a voluntary third provisional filing and top-up payment 6 months after tax year-end; and
- A detailed annual income tax return, which must be filed (usually) within 12 months after the financial / tax year-end.

Provisional tax should be paid based on a realistic estimate of what the actual tax payable will be for the applicable tax year. Depending on certain parameters, penalties are levied if provisional tax is underpaid.

An annual mineral royalty return must be filed within 6 months of the taxpayer's year end. In addition, provisional mineral royalty returns must also be filed every six months with the same timing as for the above provisional tax returns.

VAT returns must be submitted on a monthly or bi-monthly basis depending on turnover.

Employment tax returns must be filed on a monthly basis and a bi-annuall reconciliation will also need to be submitted. Relevant returns will also need to be filed with the Department of Labour for UIF and COIDA.

Transfer pricing documentation has recently become compulsory in South Africa where a company meets a set list of requirements. This includes Country-by Country Reporting, Master file and Local file documentation, as well as the requirement to generate and retain significant supporting documentation. The provisions are complex, and each company should consider the requirements in detail and assess whether they need to submit transfer pricing documentation.

Additional compliance requirements may arise depending on the liability for the other taxes set out in this document.

Tax Audits

The South African Revenue Service ("SARS") has not provided detail on how they select companies to audit. Tax audits by SARS are common in South Africa.

Power and Utilities Sector

Brief overview of Power and Utilities development in South Africa

In South Africa, the majority of electricity is generated via coal-fired power stations that are owned and operated by the state-owned power utility Eskom. While conventional thermal power sources will likely remain the major source of electricity generation for the foreseeable future, South Africa is diversifying the generation mix through the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP). As of 31 March 2020, 4 201 MW of electricity generation capacity from 67 IPP projects has been connected to the national grid.

Fiscal tax regime

The general fiscal tax regime may be said to comprise primarily of direct tax (mainly corporate income tax) and various indirect taxes, referenced in the oil & gas section. It is noted that, unlike, for example, the Oil & gas industry, the Power and Utility industry does not enjoy a special fiscal tax regime other than certain enhanced allowances.

Regulatory framework

Key Acts and regulations in the sector include:

The key regulators in the Power and Utility industry include:

- The South African National Energy Development Institute ('SANEDI') is a Schedule 3A state owned entity that was established as a successor to the previously created South African National Energy Research Institute (SANERI) and the National Energy Efficiency Agency (NEEA). The main function of SANEDI is to direct, monitor and conduct applied energy research and development, demonstration and deployment as well to undertake specific measures to promote the uptake of Green Energy and Energy Efficiency in South Africa.
- The National Energy Regulator ('NERSA') is a regulatory authority established as a juristic

person in terms of Section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004). NERSA's mandate is to regulate the electricity, piped gas and petroleum pipelines industries in terms of the Electricity Regulation Act, No. 4 of 2006 Gas Act, No. 48 of 2001 and Petroleum Pipelines Act, No. 60 of 2003.

Forms of contracts

Power Purchase Agreements between Independent Power Producers and Eskom

Tax Incentives in the industry

Energy Efficiency Income Tax Incentive – Section 12L

Section 12L of the Act allows deductions in respect of energy efficiency measures. The deduction is calculated as 95 cents per kilowatt hour or equivalent of energy savings made within a year against a verified 12-month baseline. The baseline measurement and verification of savings must be done by a South African National Accreditation System (SANAS) accredited Measurement and Verification (M&V) body. Apart from certain renewable energy sources, all energy carriers may qualify for the incentive.

SANEDI plays the role of implementing and overseeing the application process of the incentive claimant by the issuing of the section 12L Tax Incentive certificate at the application approval. A taxpayer may only claim deductions provided for in section 12L if they have obtained the Tax Incentive Certificate.

To cushion households and energy intensive industries from potential adverse impacts after the introduction of the Carbon Tax Act, and to help industries transition to lower carbon, energy efficient practices, Government has extended the duration of the incentive to years of assessment ending before 1 January 2023, which aligns with the first phase of the carbon tax.

Renewable Energy Income Tax Incentive – Section 12B

Section 12B of the Act makes provision for an accelerated capital allowance for moveable assets owned by the taxpayer and used in the generation of energy from wind, solar, hydropower and biomass. The incentive provides for an allowance of 50/30/20 percent of the cost of acquisition of the asset during the first three years after the asset is brought into use.

Where a taxpayer makes improvements to a building or land of which it is not the owner, it may still claim a deduction in respect of any expenditure incurred to effect the improvements, provided the requirements of section 12N are met. Section 12N deems the taxpayer for purposes of certain sections (including sections 12B and 12D) to be the owner of the improvements so affected provided (1) the taxpayer holds a right of use or occupation of land or a building ; (2) effects an improvement on the land or building in terms of the Independent Power Producer Procurement Programme administered by the Department of Energy; and (3) uses or occupies the land or building for the production of income or derives income from the land or building.

Additional deduction in respect of roads and fences in the production of renewable energy - Section 12U

Section 12U provides for a 100% deduction in respect of expenditure incurred in relation to the construction and/or improvement of roads, fences, foundation or support structures used for the purpose of generating electricity, provided generating electricity constitutes that taxpayer's trade. The deduction is only available for the generation of renewable energy (wind, solar, hydropower and biomass) and only to the extent that it exceeds 5 megawatts. Section 12U also provides for the deduction of pre-trade expenditure, provided that the expenditure would have been deductible had the taxpayer, at the time of incurring the expenditure, commenced with carrying on its trade.

Accelerated write-off period for electricity transmission cables – Section 12D

The write-off period for electricity transmission cables is 20 years

Repeal of Exemption of certified emission reductions – Section 12K

The repeal took effect from 1 June 2019. The reason for the repeal is to avoid a situation where taxpayers enjoy a double benefit for the same emissions reductions, namely an income tax exemption under section 12K of the Income Tax Act, as well as a lower carbon tax liability for a taxpayer under the Carbon Tax Act.

Carbon Tax Act: Please refer to the comments on the Oil & gas sector.

Tanzania

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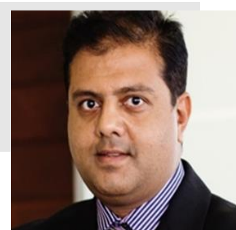

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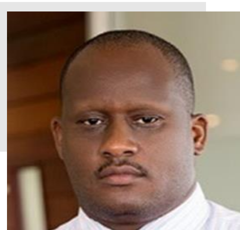

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Oil and Gas Sector

Brief overview of the Oil & Gas industry in Tanzania

Although there is a long history of oil & gas exploration in Tanzania, hydrocarbon exploration activity intensified in year 2000 with the number of active production sharing agreements (PSAs) increasing significantly. This interest accelerated in the period from 2010 following significant discoveries of commercial quantities of gas in the deep water offshore. The most recent offshore licensing round, which was based on a new 2013 model PSA, was completed in 2014 but had a muted response. No new offshore licences have been announced since January 2012.

Tanzania is already producing gas for domestic use from Songo Songo and Mnazi Bay gas fields, which are near onshore. The Songo Songo gas field has been in operation since 2004. Following the commissioning in October 2015 of the Mtwara-Dar es Salaam natural gas pipeline, gas from the Mnazi Bay field has been supplied to this pipeline. The highest daily natural gas production rate increased from 95 million cubic feet (mcf) per day in 2015/16 to 210 mcf per day in 2019/20.

The big natural gas discoveries were made in 2013 and 2014 in the Ruvuma Basin – the northern part of which is in Tanzania, and the southern part in Mozambique (where even larger discoveries have been made). These reserves are approximately 100km deep offshore, and the aspiration is to develop a liquefied natural gas (“LNG”) plant to enable export overseas. The current status is that exploration programmes and conceptual design work are complete, the site for the LNG plant has been agreed, and the focus now is discussions on the host government agreement regarding the fiscal and regulatory framework.

A significant development of interest is the anticipated construction of the Uganda-Tanzania crude oil pipeline, which it is hoped will commence soon. The time frame to complete construction of this $3.55bn project would be three years, and at 1,443 km the pipeline (which would start in Hoima, Uganda and end at the port of Tanga, Tanzania) would be the world’s longest electrically heated crude pipeline.

Reservoir estimates

As at April 2020 Tanzania's estimate of recoverable natural gas reserves was 57.54 trillion cubic feet (tcf) (onshore 10.41 tcf and offshore 47.13 tcf).

Regulatory estimates

Institutional oversight and regulatory framework

Petroleum exploration and development is governed by the Petroleum Act 2015 (PA 2015), which empowers the Government to grant exclusive rights to explore for and produce petroleum in relation to a particular licence area.

The key regulators in the oil & gas industry include:

- Oil & gas Bureau that advises on sectoral strategic matters;
- Petroleum Upstream Regulatory Authority ("PURA"), the upstream regulator, which amongst other things advises on contractual matters with Contractors; as part of this responsibility PURA has the remit to develop a model PSA for purpose of approval by the Cabinet, which once approved, shall serve as a guidance;
- Energy and Water Utilities Regulatory Authority ("EWURA"): the regulator of mid and downstream activities;
- Tanzanian Petroleum Development Company ("TPDC") now designated as the official National Oil Company ("NOC").

There is no separate tax legislation for the oil & gas tax sector. Nevertheless, the general legislation does incorporate sections specifically dedicated to the sector.

Forms of contracts

An entity seeking to engage in oil & gas activities in Tanzania is required to enter into a PSA. The parties to a PSA are the Government of the United Republic of Tanzania, TPDC in its role as NOC and which is the licence holder, and the relevant entity (''The contractor''). The starting point for negotiations is the model PSA in place at the relevant time – the latest model PSA is the 2013 model, and previous models have included a 2008 model and a 2004 model.

Forms of Petroleum Licence

The PA 2015 provides for the following two types of licence:

- Exploration licence – Grants the licencee exclusive rights to explore in a specified exploration area for petroleum, and to carry on such operations and execute such works as are necessary for that purpose. The licence is granted for a period of four years. It can be extended twice; the first extension lasts for four years and the second extension lasts for 3 years. Upon renewal, there will be a requirement to relinquish part of the licence area – normally 50% of the retained contract area.
- Development licence – Grants the licencee exclusive rights to carry on exploration and development operations in the development area; sell or otherwise dispose, of the petroleum recovered; and carry on operations and execute such works in the development area as are necessary for the purpose of the licence. The licence is granted for a period not exceeding twenty-five years and upon approval can be extended for an additional twenty 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 PSAs provide for recovery of expenses against "Cost Oil" or "Cost Gas" (up to 50% of production in a calendar year).

The 2013 model PSA sets out the levels of the share of "Profit Oil" or "Profit Gas", which vary depending on whether the production is onshore or offshore, whether gas or crude oil is produced and also the level of production (with the Contractor share diminishing as the production level increases). The range of the relevant percentage shares are as follows:

	"Profit Oil"	"Profit Gas"
Contractor Share	10% - 35%	15% - 40%
TPDC Share	90% - 65%	85% - 60%

The contractor share provided for under predecessor models was higher – in particular, under the 2004 model ranging between 30% to 50% for profit oil, and under the 2008 model to between 10% to 30% for profit oil, and between 15% to 40% for profit gas (subsequently adjusted in 2010 addendum to 20% to 50%).

Capital investment regulations

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

Local content regulations

The PA 2015 and The Petroleum (Local Content) Regulations, 2017 set out the local content requirements. These include requirements for a contractor to:

- Give preference to the purchase of Tanzanian goods which are produced or available in Tanzania and services which are rendered by Tanzanian citizens and/or local companies. Where goods and services are not available in Tanzania, such goods shall be provided by a company which has entered into a joint venture with a local company, with the local company having a minimum 25% interest in the joint venture. (A local company is defined as one which is either (a) 100% owned by Tanzanian citizens; or (b) a company which is in a joint venture with a Tanzanian citizen or citizens whose participating share is not less than fifteen percent.)
- Prepare a five-year procurement plan indicating use of local services in insurance, finance, legal, accounts, health matters and goods produced in Tanzania.
- Give priority to qualified Tanzanian citizen in employment and training in any matter relating to the petroleum activity. A contractor is required to employ only Tanzanians in semi-skilled and unskilled labour.
- Give priority to a Tanzanian citizen in any matter relating to the technology transfer, research, development and innovation in any petroleum related activities.
- Feed into a report to be prepared by TPDC and submitted within 60 days of the end of the calendar year. The report will cover the extent of utilisation of Tanzania goods and services during the calendar year.
- In accordance with an approved local content plan, shall provide training and recruitment of Tanzanians in all phases of petroleum operations and gas activities. A detailed semi-annual report on recruitment and training of Tanzanians should be submitted to PURA.
- Prepare annually a corporate social responsibility plan to be agreed by the relevant local government authority.
- Comply with the integrity pledge as set out in the PA 2015.

Fiscal clauses in the PSA

Taxation regime

The model PSA (2013) incorporates a number of clauses on financial charges and taxation including the following:

- Payment and Annual Charges (article 11)
- Taxation and Royalty (article 16)
- Additional Profits Tax (article 17)
- Import Duties (article 23)
- Assignment and Transfer of Rights (article 27)

Charges include annual charges in respect of acreage, as well as signature and production bonuses. The taxation and royalty article set out the taxes to which the Contractor and its shareholders will be subject including income tax, import duties, local Government taxes (not in excess of those generally applicable), stamp duties, land rent and other imposts for services.

Royalties are payable by delivery to the Government of a percentage of petroleum production. Royalty is a first charge on production before recovery of costs. Additional profits tax applies where rates of return exceed certain defined thresholds, with a 25% rate applicable to the first tranche (“First Accumulated Net Cash Position”) and 35% to the second tranche (“Second Accumulated Net Cash Position”).

The import duty article provides for relief from taxes on import of goods required for carrying out exploration and development operations under the agreement. The article on assignment and transfer of rights provides for a transfer on assignment fee ranging 1% to 2%. However, this only applies in relation to transactions not subject to stamp duty. The PSA does not of itself override tax law and therefore in principle any exemption from taxes contemplated in the PSA must also be reflected in the principal tax legislation, or a gazette notice issued under such legislation, so as to be effective.

Corporate income tax - general

Residence and source

A Tanzanian resident is taxed on worldwide income, irrespective of source. Non-residents are taxed on income with a source in Tanzania. A company is tax resident if it is incorporated or formed under the laws of Tanzania or if the management and control of its affairs is exercised in Tanzania.

Income tax rate

Income tax is charged at a rate of 30% on income of a resident corporation or a permanent establishment (PE) of a non-resident corporation. A PE is subject to tax of 10% on repatriated income calculated based on a specific formula. This mirrors the 10% withholding tax rate normally applicable when a resident corporation pays a dividend.

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

Capital allowances

Capital expenditure incurred by an entity engaged in petroleum operations, and not being cost gas or cost oil expenditure, is subject to tax depreciation at 20% straight line basis – in other words, a straight-line write-off over 5 years. The claim for such depreciation cannot be deferred to a later period.

Cost gas/cost oil (income and expenditure)

Cost gas or cost oil revenue and expenditure are excluded from the income tax calculation. The practical effect of this is to align the income tax offset of cost gas or cost oil expenditure with the timing of cost recovery offset under the production sharing mechanism.

Decommissioning expenditure

Relief for decommissioning is limited to contributions paid into a decommissioning fund, being a fund outside the control of the person conducting the operations.

Ring-fencing

Ring-fencing is applicable to “each separate petroleum operation”, and the general rule is that each petroleum right constitutes a separate petroleum operation (subject to special considerations in relation to interaction of exploration licence and development licence). Ring fencing ends at the delivery point identified in the PSA.

Loss utilisation

For the extractive sector (including upstream oil & gas), the utilisation of losses brought forward is limited to 70% of current year profits, with any balance carried forward to subsequent years (i.e. a minimum of 30% of profits for the year are subject to tax irrespective of the quantum of losses brought forward).

Transfer pricing

Transactions between related parties are required to be on an arm’s-length basis. This requirement also applies between ring-fenced activities of the same person. If the Commissioner considers that a person has failed to comply with this requirement, the Commissioner may make such adjustments as the Commissioner thinks appropriate.

Thin capitalisation

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

Expenditure expressly disallowed

The income tax provision for oil & gas expressly disallow the following:

- Charitable expenditure
- Bonus payments in respect of grant, transfer or assignment of petroleum rights.

Annual charges and payments

Tax relief is specifically provided for annual charges and royalties incurred under the PA 2015.

Disposal of interest in petroleum licence / farm out arrangements

A disposal of a petroleum right prior to commencement of production, in particular in the context of a farm out arrangement, is treated as a disposal of an investment asset. If a gain arises, then tax is charged at the rate of 30% of such gain, which is computed separately from business income. This tax is collected by way of single instalment tax at the time of the transaction. No tax depreciation is available on the cost of the licence for the purchaser.

A commitment under a farm out commitment to incur expenditure is treated as disposal consideration resulting in taxable income.

Withholding tax

“Technical services” (as defined) supplied to a person in the oil & gas sector, provided by a resident supplier (or permanent establishment) of a non-resident are subject to a 5% withholding tax, which is a final tax.

Other than the 5% resident withholding tax on technical services, there is no special withholding tax regime for the oil & gas sector and hence the general rates apply.

Where payments are made to non-residents, the rates include the following:

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

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

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 4% 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

VAT is chargeable on all taxable goods and services supplied in, or imported into, Mainland Tanzania. The standard rate of VAT is 18%. The export of goods and certain services is eligible for zero rating. Supplies of certain goods and services are exempt from VAT.

For imported goods, VAT is payable at the time of importation together with any import duties. For imported services, VAT is accounted for by registered businesses through a "reverse charge" mechanism, where exempt supplies constitute 10% or more of total supplies.

Businesses with an annual taxable turnover (including imported taxable services) of more than TZS 100 million must register for VAT. The Commissioner has the discretion to register those who wish to be registered as intending traders – for example, investors whose projects have not commenced production, but who wish to be VAT-registered in order to reclaim the VAT they incur on start-up costs.

VAT exemptions relevant to the oil & gas sector include the following:

- Goods eligible for relief under the East African Customs Management Act (where imported by a registered and licenced explorer or prospector for exclusive use in oil, gas or mineral exploration or prospecting activities).
- Various goods imported by a natural gas distributor (including CNG plants equipment, natural gas pipes, transportation and distribution pipes, CNG storage cascades, CNG special transportation vehicles, natural gas metering equipment, CNG refuelling of filling, gas receiving units, flare gas system, condensate tanks and leading facility, system piping and pipe rack and condensate stabilizer).
- VAT deferral also applies on imported capital goods where VAT payable is equal to or greater than TZS 10 million but subject to a requirement for (i) application for approval by TRA and (ii) provision of security. Where VAT deferral applies, the deferred VAT is accounted for as output tax and input tax in the same VAT return.
- The VAT deferral can be refused where there is any outstanding tax liability or outstanding tax return under any tax law.

Registered businesses must submit VAT returns and make payment of any tax due on a monthly basis.

Businesses entitled to VAT refunds can claim any remaining credit six months after a refund first became due, subject to all intervening returns being rendered. Any claim for a VAT refund must be supported by an auditor's certificate of genuineness. Businesses with 50% or more of turnover that relates or will relate to zero rated supplies (normally, exports) automatically qualify for refund on monthly basis.

Value Added Tax – Zanzibar

A separate but similar VAT Act applies in Zanzibar. However, the VAT standard rate was amended from 18% to 15% effective from 1 July 2020

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).

The EAC CET does provide for sector specific exemption for equipment related to exploration, development and distribution activities (subject to set procedures).

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

Excise duty

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

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.

Tax exemptions

Customs duty, Value Added Tax

Refer to comments above in relation to customs duty exemption, and VAT exemption / deferral.

Mtwara Oil & gas Freeport Zone

The Export Processing Zones Authority (EPZA) has declared 110 hectares in Mtwara to be a Freeport Zone so as to facilitate the speedy handling of cargo for gas and oil exploration works. This zone includes 10 hectares at the existing Mtwara port, which are scheduled for development. The Special Economic Zone Act 2006 and the EAC Customs Union (Freeport Operations Regulations) stipulate that companies seeking to be investors in such a zone should be limited to companies that undertake the following services for oil exploration and gas extraction companies: warehousing and storage; labelling, packaging and 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 licence is required to provide summaries of all geological and geophysical work carried out, drilling activity and results obtained, and a list of maps, or reports and other geological and geophysical data for the period.

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

Audit and other reporting requirement

The Companies Act requires the preparation of audited accounts, and these have to be filed with the Registrar of Companies. The model PSA requires the Contractor to maintain at its business office in Tanzania accounting records relating to petroleum operations under the PSA and gives TPDC the right to audit the records of a contractor for compliance with reporting requirements as provided by the PSA terms. The model PSA terms include a requirement that a Contractor shall prepare the following 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. The latest validation, being EITI's quality assurance mechanism to measure country progress in meeting the requirements of the EITI Standard, was issued on 17 June 2020. This validation concluded that Tanzania had made meaningful progress overall in implementing the EITI Standard but also identified a number of corrective

actions, following which a third Validation will commence on 17 December 2021.

Tax and other payroll contributions payment and filing requirements

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

- Income Tax: A statement of estimated tax payable is due for filing by the end of the first quarter, and estimated tax ("instalment tax") is then paid on a quarterly basis during the accounting year. An annual income tax return (supported by a tax computation and certified financial statements) is required to be filed within six months of year end with any remaining unpaid tax due at the same time.
- 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.
- Skills and Development Levy (SDL): The levy is required to be remitted to the TRA within 7 days after the end of the month of deduction. Furthermore, the SDL returns are to be filed monthly within 7 days after the end of each month.
- Workers Compensation Fund (WCF): The WCF contributions are to be made one month after the month of deduction. WCF returns are to be filed on the last working day of the month following the month of deduction. The taxpayer is also required to file annual WCF returns by 31 March of each calendar year.
- Social security contributions: The contributions are to be made one month after the month of deduction.
- VAT: Once registered, a person is required to file monthly VAT returns by the 20th day of the following month declaring output tax charged on supplies made and deducting input tax incurred on goods and services acquired for the purpose of the business (subject to documentary and other requirements).

Profit repatriation issues

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

Foreign exchange controls

Although the 2004 model PSA gave the Contractor the explicit right to maintain bank accounts outside Tanzania, this right is not reflected in the 2008 and 2013 model PSAs. In addition, The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 expressly states that earnings must be retained in local financial institutions except where dividends have been distributed. The 2013 model PSA also requires the Contractor to inform the Bank of Tanzania of all bank details and exchange dealings with other financial institutions.

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

Power and Utilities Sector

Brief Overview of Power and Utilities development in Tanzania

Tanzania has abundant and diverse unexploited energy sources placing the country among the countries with highest potential in power generation in Africa. The energy sources in Tanzania range from biomass, natural gas, hydro, uranium, coal, geothermal, solar and wind. The main source of energy is biomass. In the past, hydropower had been the main source of electricity, however, as at April 2020 natural gas accounted for almost 57% of the national grid electricity, followed by hydropower (37%), with the remaining percentage contributed by other sources (diesel and biomass). The rise is accounted by the commissioning of geothermal power generation plants i.e. Kinyerezi Power Plant I – 150MW, Kinyerezi Power Plant II – 240MW. As at July 2020 installed capacity was 1,504 MW (comprising of Thermal 925MW, Hydroelectric 568MW, and other Renewables 82.4MW).

The most significant recent development in relation to the power sector is the construction of the 2,115MW Julius Nyerere Hydro Power Project (JNHPP), located at Stiegler's Gorge. Construction commenced in 2019 and as of June 2020 the project was 40 percent complete; and completion of construction is set for 2022. On completion it will be Africa's largest dam by installed capacity, over Egypt's Aswan High Dam (2100MW) Mozambique's Cahora Bassa Dam (2075MW) and Angola's Lauca Dam (2069MW).

Other hydro projects in the pipeline include Ruhudji Project (358 MW), Kikonge Project (300MW), and Rumakali project (222 MW). Furthermore, more significant contribution is expected from renewable energy with projection that by the end of 2022 solar energy and wind power will contribute 150MW and 200MW respectively.

Challenges facing the industry

These include the risk of disruption to hydro-power generation as a consequence of uncertain weather patterns, older transmission and distribution infrastructures, lack of cost-reflective tariffs, the uncertain credit worthiness of the national electricity utility company, Tanzania Electric Supply Company (TANESCO), low access to reliable electricity and costs associated with grid extension in a vast country with low population density.

Tanzania's electricity policy reflects goals set out in the Tanzania National Development Vision 2025, which envisages a significant increase in generation capacity so as to achieve the objective of "nurturing industrialisation for economic transformation and human development" and ultimately become a middle-income semi-industrialised country by 2025. Tanzania's Power System Master Plan 2016 ("PSMP 2016") projects the large-scale expansion of the generation, transmission and distribution capabilities, with generation capacity to be boosted from around 1,500 MW to 10,000 MW over a decade. It is anticipated that by 2040 renewable energies will contribute 5% of the energy mix, with the primary contributors being natural gas (40%), coal (35%) and hydro (20%).

Regulatory regime

Institutional oversight and regulatory framework

The Ministry of Energy and Minerals (MEM) oversees the Power and Energy sector in Tanzania. The MEM has the responsibility to form policies and promote investment, in the Energy and Power sector.

Institutions that operate under the MEM to regulate Energy and Power sector include:

- Energy and Water Utilities Regulatory Authority (EWURA): an autonomous multi-sectoral regulator responsible for most regulation tasks including regulation of licencing, standards, tariff, performance monitoring and compliance.
- Tanzania Electric Supply Company (TANESCO): this is the country's main supplier of electricity and the operator of the transmission and distribution system. In Zanzibar, electricity is supplied by Zanzibar Electricity Supply Company (ZANESCO);
- Rural Energy Agency (REA): autonomous body under MEM that promotes and finances rural energy projects;
- Tanzania Petroleum Development Corporation (TPDC): responsible for oil & gas exploration and production activities;
- Tanzania Geothermal Development Company (TGDC): responsible for geothermal exploration and project development.

Legislation and Policy context

- EWURA Act 2001 and 2006: This Act makes provision for the establishment of the EWURA and the EWURA Consumer Consultative Council, lays down rules relative to powers and functioning of the Authority and the Council, and provides for the resolution of disputes in relation to regulated services and goods, including the supply of water and sewerage services.
- National Energy Policy 2015: This policy, being a merger of previous policies including the National Energy Policy 2003, the Natural Gas Policy, the Petroleum Policy, the Renewable Energy Policy and the Bio-Energy Policy. The overall aim is to have efficient and sustainable energy production, procurement, transportation, distribution and end-use systems through energy pricing and private sector participation in the electricity market.
- The Rural Energy Act 2005: This establishes Rural Energy Board, Fund and Agency to be responsible for promotion of improved access to modern energy services in the rural areas.
- The Electricity Act 2008: This sets out roles of the MoE (previously MEM) and EWURA on generation, storage, transmission, supply and use of electric energy. It also sets out criteria for tariff setting, licence awards and disputes resolution procedures.
- The Public Private Partnership Act 2010: set out the responsibilities and obligations of government and industry in Public Private Partnership coordination unit within the Tanzania Investment Centre.

Taxation regime

There is no separate tax legislation for the energy and power sector; hence, the general tax regime applies to the sector.

Corporate income tax - general

Residence and source

A Tanzanian resident is taxed on worldwide income, irrespective of source. Non-residents are taxed on income with a source in Tanzania. A company is tax resident if it is incorporated or formed under the laws of Tanzania or if the management and control of its affairs is exercised in Tanzania.

Income tax rate

Income tax is charged at a rate of 30% on income of a resident corporation and of a permanent establishment (PE) of a non-resident corporation. A PE is subject to tax of 10% on repatriated income calculated based on a specific formula. This mirrors the 10% withholding tax rate normally applicable when a resident corporation pays a dividend. Certain payments to non-residents are subject to tax at the relevant non-resident withholding tax (WHT) rates (see further details below).

Capital allowances

Much equipment used in the sector would be classified as specialised public utility equipment qualifying for capital allowance at the rate of 25% reducing balance.

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

Loss utilisation

For a company that has been making losses for five consecutive years, the utilisation of losses brought forward is limited to 70% of current year profits, with any balance carried forward to subsequent years (i.e. a minimum of 30% of profits for the year are subject to tax irrespective of the quantum of losses brought forward).

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 adjustments as the Commissioner thinks appropriate.

Furthermore, a person transacting with related parties is required to maintain contemporaneous transfer pricing documentation supporting that the transaction are conducted at arm's length.

Thin Capitalisation

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

Investment disposals / capital gains tax

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

Alternative minimum tax

Alternative minimum tax is payable at 0.5% of turnover by a resident corporation with perpetual unrelieved losses (for the year of income and the preceding two years of income).

Withholding tax

There is no special withholding tax regime for the energy and power sector and hence the general rates apply.

Where payments are made to non-residents, the rates include the following:

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

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

Payroll taxes

Personal income tax

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

Skills and development levy, Workers Compensation Fund

An employer (with at least four employees) is required to account for skills and development levy and workers compensation fund at rates of 4% 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

VAT is chargeable on all taxable goods and services supplied in, or imported into, Mainland Tanzania. The standard rate of VAT is 18%. The export of goods and certain services is eligible for zero rating. Supplies of certain goods and services are exempt from VAT. For imported goods, VAT is payable at the time of importation together with any import duties. However, for imported services, VAT is accounted for by registered businesses through a "reverse charge" mechanism, but only where exempt supplies constitute 10% or more of total supplies. Businesses with an annual taxable turnover (including imported taxable services) of more than TZS 100 million must register for VAT. The Commissioner has the discretion to register those who wish to be registered as intending traders – for example, investors whose projects have not commenced production, but who wish to be VAT-registered in order to reclaim the VAT they incur on start-up costs.

VAT exemptions relevant to the power generation sector include the following exemptions related to solar power:

- supply of solar panels, modules, solar charger controllers, solar inverter, solar lights, vacuum tube, solar collectors and solar battery.

VAT deferral applies on imported capital goods where VAT payable on each unit of capital goods is equal to or greater than TZS 10 million but subject to a requirement for application for approval by TRA. Where VAT deferral applies, the deferred VAT is accounted for as output tax and input tax in the same VAT return.

Registered businesses must submit VAT returns and make payment of any tax due on a monthly basis. Businesses entitled to VAT refunds can claim any remaining credit six months after a refund first became due, subject to all intervening returns being rendered. Any claim for a VAT refund must be supported by an auditor's certificate of genuineness. Businesses with 50% or more of turnover that relates or will relate to zero rated supplies (normally, exports) automatically qualify for refund on monthly basis.

Value Added Tax – Zanzibar

A separate but similar VAT Act applies in Zanzibar. However, the VAT standard rate was amended from 18% to 15% effective from 1 July 2020.

Customs duty

Tanzania is a member of the East African Community ("EAC"), which became a Customs Union on 1 January 2005. The customs duty rates generally applicable under the EAC Common External Tariff ("CET") are as follows: 0% (raw materials, capital goods), 10% (semi-finished goods) and 25% (finished final consumer goods).

Sector specific exemptions under the CET include custom duty exemptions for:

- Equipment and inputs for direct and exclusive use in geothermal exploration, development and distribution (subject to approval by the relevant revenue authority).
- Specialised equipment for development and generation of solar and wind energy including deep cycle batteries which use and/or store solar power.

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

Excise duty

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

Stamp duty

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

Local Taxes

Local Governments normally charge a 0.3% service levy based on turnover generated in the relevant district. Local Governments also levy property rate on properties that is payable on annual basis at the rate determined by the municipalities for surveyed properties and fixed amounts for un-surveyed areas.

Incentives

Refer to comments above in relation to capital deductions, customs duty exemption and VAT exemption / deferral.

In addition, given the large-scale nature of power generation projects these may also qualify for “strategic investor status” and related tax reliefs. The conditions for eligibility are investment of not less than US $50m for foreign investors or US$ 20m for local investors, significant employment creation, impact on the national economy, the extent to which the project brings capacity to manufacture products for export and earning of foreign exchange, introduction of new/innovative technology and the geographical location of the project. An eligible investor is entitled to tax reliefs in the form of exemption (i) of 75% import duty on deemed capital goods, and (ii) from withholding tax on interest on loans from non-resident unrelated banks.

Additional incentives are available for special strategic investors (upon approval by the National Investment Steering Committee). The threshold for “special strategic investor” status is investment capital is not less than US$ 300m.

Tax exemptions

Walue Added Tax (VAT)

Refer to comments above in relation to VAT exemption / deferral.

Compliance requirements

Tax and other payroll contributions payments and filing 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 certified financial statements) 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.
- Skills and Development Levy (SDL): The levy is required to be remitted to the TRA within 7 days after the end of the month of deduction. Furthermore, the SDL returns are to be filed monthly within 7 days after the end of each month.
- Workers Compensation Fund (WCF): The WCF contributions are to be made one month after the month of deduction. WCF returns are to be filed on the last working day of the month following the month of deduction. The taxpayer is also required to file annual WCF returns by 31 March of each calendar year.
- Social security contributions: The contributions are to be made one month after the month of deduction.
- VAT: Once registered, a person is required to file monthly VAT returns and submit tax payment to TRA by the 20th day of the following month declaring output tax charged on supplies made and deducting input tax incurred on goods and services acquired for the purpose of the business (subject to documentary and other requirements).

Profit repatriation issues

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

Uganda

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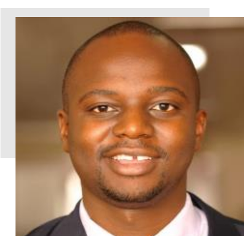

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Oil and Gas Sector

Brief history on Oil & Gas development in Uganda

Geological field expeditions for petroleum exploration were first carried out by E.J Wayland in the early 1920's and are documented in the publication ''Petroleum in Uganda'' 1925. Shallow stratigraphic wells drilled by the African – European Investment Company between 1936 and 1956 revealed numerous shows and recovered free oil on test. Oil exploration activities started again in the beginning of the 1980's when an aeromagnetic survey was carried out over the entire Albertine Graben 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 centers along the entire length of the Graben. As a follow up to this survey, the petroleum unit in the Department of Geological Survey and Mines carried out a significant amount of geological and geophysical work from the late 1980's up to the early 1990's. This unit was transformed into Petroleum Exploration and Production Department (PEPD) in 1991.

As at the end of 2017, there were seven Production Sharing Agreements (PSA) between the Government and the oil companies. These include the four PSAs that were initially held by Total E&P Uganda B.V (Total E&P), Tullow Uganda Operations Pty (Tullow Uganda) and CNOOC Uganda Limited (CNOOC Uganda) and additional three signed in September 2017 with Armour Energy Limited and Oranto Petroleum Limited. The four PSA's are currently held by Total E&P and CNOOC Uganda following Tullow's exit.

To date, a total of 39 exploration and 81 appraisal wells have been drilled in the country. Out of these, hydrocarbons have been found in 106 wells representing a success rate of approximately 90%. So far 21 oil / gas field discoveries have been made. This discovery relates to exploration in only about 40% of the prospective acreage. With new entrants like Oranto and Armour Energy, more discoveries are anticipated in the short to medium term.
The oil discoveries are estimated at 6.5 billion barrels of oil out of which 1.4 – 1.7 billion barrels are estimated to be recoverable. Of the discoveries made, nine production licences have already been issued:

- One to CNOOC Uganda over the Kingfisher area;
- Five initially granted to Tullow Uganda and have been transferred to Total E&P; and
- Three granted to Total E&P.

The Government's development plan for Lake Albert Rift Basin includes a refinery, a crude oil pipeline, an industrial park which will accommodate petrochemical and energy-based industries and storage terminals.

Following the transition from exploration to production phase in Uganda's Oil & gas sector in FY 2017/18, the update on the requisite infrastructure and skills in preparation for oil production is summarised below:

Current status of licensing

To date, out of a total of 9 production licences, Total E&P holds 8 production licences over 13 fields issued in 2016. The 5 production licences held by Total E&P over 9 fields where transferred from Tullow Uganda effective 1 January 2020. CNOOC Uganda holds 1 production licence over the Kingfisher field issued in 2012. Total E&P's application for additional 3 production licences is under review by the Government.

On the other hand, there are 3 exploration licences operated by Armour Energy Limited which holds an exploration licence over the Kanywataba block issued in 2017 and Oranto Petroleum Limited which holds two stratigraphic licences over Ngassa shallow and deep plays.

Overall, the licence areas represent about 10% of the Albertine Graben while 90% is not licenced.
In May 2019, the Government of Uganda through the Ministry of Energy and Mineral Development announced areas open for bidding for petroleum exploration. This is the second licensing round in Uganda. This licensing round covered 5 blocks in the Albertine Graben (i.e. Avivi, Omuka, Kasuruban, Turaco and Ngaji). These blocks have seismic data coverage from past exploration. The applications for qualifications should have been submitted by September 2019, with the Government of Uganda expecting to sign Production Sharing Agreements and issue exploration licences to successful firms by December 2020. However due to the Covid-19 Pandemic that greatly impacted the oil and gas sector, the Ministry of Energy and Mineral Development (MEMD) communicated the postponement of the submission of applications for qualification by interested applicants to 30 September 2020. The applications are being reviewed by the MEMD.

COVID 19 impact on Uganda's ongoing energy developments

Currently, the exploration and development projects are in the pre-FID phase and the start date is uncertain mainly due to pending negotiations between various stakeholders. That said, it is possible the slow progress of events has been further exacerbated by COVID-19 pandemic and low oil prices globally which dissuade oil players from committing finances in the current environment.

The Government's approval of the transfer of Tullow's interest to Total E&P's and the transfer of operatorship for block 2 increased the prospects of oil production reaching FID. However, the situation remains uncertain as negotiations on the FID could be affected by the global economic slowdown and low oil price. The acquisition of assets does not necessarily signal that projects are about to go ahead but will also depend on the breakeven price for Uganda's oil project(s) relative to global crude oil prices. The viability of the project could also be determined by investors' views of the global oil market over coming years since production is not expected to start until 2024.

Consequently, the delays in commencing oil production will challenge the Ugandan government's ability to pay off its debt. Further, it could result in a slowdown in exploration, with delays and cancellations for high risk or cost projects.

Tullow Uganda sale of assets to Total E&P

In 2017, Tullow Uganda announced a plan to sell 21.57% of its 33.33% interests in the blocks it held to CNOOC Uganda and Total E&P at USD 900 million. CNOOC Uganda subsequently exercised its pre-emption rights under the joint operating agreements to acquire 50% of the interests being transferred to Total E&P on the same terms and conditions.

However, in August 2019, Tullow terminated the farm down following expiry of the Sale and Purchase Agreements (SPA). The termination of the transaction was due to a dispute between the Government and the Joint venture partners (JV partners) i.e. Tullow Uganda, CNOOC Uganda and Total E&P which stemmed from the tax treatment of the transaction, including determination of the capital gains tax (CGT) payable to the Uganda Revenue Authority (URA) and deductibility of costs.

In November 2020, Tullow Oil plc (Tullow) completed the sale of its entire assets (i.e. 33.33%) in Uganda to Total E&P with Tullow receiving USD 500 million. Tullow is also due to receive a further USD 75 million when Final Investment Decision on the development project is taken and contingent payments linked to the oil price payable after production commences. This transaction followed the satisfaction of the deal conditions (i.e. the execution of the binding tax agreement and Ugandan Government approval for the transfer of Tullow's interest to Total E&P). The binding tax agreement between the Government of Uganda and the Uganda Revenue Authority was executed in October 2020 in which the Government of Uganda received capital gains tax for sale of its assets to Total E&P. This agreement reflected the pre agreed

principles on the tax treatment of sale of Tullow's Ugandan assets to Total E&P.

Progress on the Refinery Project

The Government signed a Project Framework Agreement (PFA) with the Albertine Graben Refinery Consortium (AGRC) in April 2018 as a potential investor who will design, build, finance and operate the refinery. The consortium is comprised of YAATRA, Saipem SpA, LionWorks Group and Baker Hughes General Electric. The project is expected to be developed as a private-public partnership estimated to cost $ 4.27 billion.

More recently, Africa Finance Corporation has advanced USD 20 million to the Government of Uganda for the construction of the refinery project. Other interested financiers include the African Development Bank and Prosper Africa. The Government of Uganda intends to raise its share of investments through debt and equity. Uganda which is expected to own 40% equity in the project, also invited other states in the East African Community (EAC) to co-own the project.

The Refinery Configuration Technical Feasibility study is complete. The Front-End Engineering and Designs study is estimated by MEMD to be 65-75% complete and is expected to be complete in mid-2021. The Environmental Social Impact Assessment (ESIA) study commenced in March 2020 and is expected to be completed in 18 months.

Progress on the East African Crude Oil Pipeline (EACOP)

The EACOP is a 1,443km crude oil export pipeline that will transport Uganda's crude oil from Kabaale-Hoima in Uganda to Tanga Port in Tanzania. The project will be constructed and operated through a pipeline company with shareholding from the Uganda National Oil Company, the Tanzania Petroleum Development Corporation and the two oil companies; CNOOC Uganda and Total E&P.

Currently, different studies are ongoing in order to define the final design of the project. The Front End Engineering Design (FEED), to determine the details on how the pipeline will be designed, constructed and operated, was completed and is pending approval by the Government of Uganda and the sponsors of the project. To date, the Environmental and Social Impact assessments, to establish the potential impact on the natural environment including the respect of human rights was approved in December 2020 and a certificate of approval was issued and the report was submitted to the Government of Uganda. Other ongoing projects include the Resettlement Action plans. Various discussions are underway to clear outstanding matters holding up progress to the Final Investment Decision (FID).

Development of Kabaale International Airport

Construction of the airport commenced in January 2018 and is expected to be completed in three years. This is part of the infrastructure under construction in preparation for oil production. The Government signed a memorandum of understanding with Colas and SBI International Holdings under a joint venture. In 2019, the master plan and detailed engineering designs for phase 1 were completed. In this same year, the first phase of construction ie construction of a Code 4F Runway (which can handle big and heavy aircraft), Taxiway, Apron, multi-purpose Terminal Building for Cargo and Passengers etc commenced and is expected to be completed by 2020.

Development of the Kabaale Industrial Park

The Government of Uganda, through the Ministry of Energy and Mineral Development acquired 29.57 km² (2957 hectares) of land near the oil fields of the Albertine Graben Region for the development of a petro-based industrial park. The Park is located in Kabaale Parish, Buseruka Sub-County, Hoima District, and is commonly referred to as Kabaale Industrial Park (KIP). KIP will accommodate, in a phased manner;- Uganda's 2nd International Airport, Crude Oil Export Pipeline Hub, Uganda Refinery, Polymer and Fertilizer Industries, Mixed (Light / Medium) Industries, Warehousing & Logistics, Agro-Processors, and Common facilities and services including worker housing, expatriate camps, schools, recreation areas, medical facilities, among others.

A Master Plan for the development of the park has been prepared by an international consultant, Ms. SMEC International, in consultation with Government Ministries, Departments and Agencies, and has been approved by Uganda's National Physical Planning Board. The implementation of the Master Plan, development and management of the park have been vested in the UNOC.

UNOC intends to develop KIP through a Joint Venture with a strategic partner. The strategic partner will be expected to bring into the joint venture technical expertise, financial capability and experience in the

development, operationalization and management of industrial parks, in an oil and gas context.

Development of the Kampala Storage Terminal (KST)

Government has acquired land in Namwambula village, near Kampala for setting up a multi user Storage Terminal. The terminal will serve as a distribution centre for petroleum products from the refinery to market centres in Kampala, Western Kenya, Northern Tanzania and Rwanda, a storage and distribution centre for imported petroleum products and a delivery point for the planned Hoima – Kampala products pipeline and the planned Eldoret (Kenya) – Kampala (Uganda) products pipeline. It will as well serve as the starting point for the planned Kampala (Uganda)-Kigali (Rwanda) products pipeline.

UNOC intends to develop KST through a Joint Venture with a strategic partner. The strategic partner will be expected to bring into the joint venture technical expertise, financial capability and experience in development and management of petroleum storage facilities.

Skills development

In May 2019, the Government of Uganda set up the oil & gas sector skills council to boost the development of skills that are required for the oil & gas sector in Uganda in preparation for expected oil production phase in 2023. This is also in support of the existing vocational institutes ie Uganda Petroleum Institute in Kigumba (UPIK), Uganda Technical College of Kichwamba (UTC) and a new third institute in Nwoya district.

Fiscal and regulatory regime

Institutional overview and regulatory framework

The legal framework that currently governs the operations of the petroleum industry includes the Petroleum (Exploration, Development and Production) Act 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013, the Public Finance Management Act 2015 and the various regulations.

The upstream and midstream Acts were passed because the previous legislation did not cover the midstream petroleum operations, environmental protection and conservation, and the new emerging challenges created by the discovery of commercial petroleum resources in Uganda.

The two Acts provide for the establishment of the Petroleum Authority of Uganda and the National Oil Company. The National Oil & Gas Policy which was operationalized by the Petroleum (Exploration, Development and Production) Act also provides for the creation of a Directorate of Petroleum, the Petroleum Authority of Uganda (PAU) and the National Oil.

The Petroleum Directorate is responsible for coordinating development of the oil & gas sector in Uganda and coordinating national capacity building for the oil & gas sector. The Petroleum Directorate is responsible for coordinating development of the oil & gas sector in Uganda and is also responsible for coordinating national capacity building for the oil & gas sector; the PAU monitors and regulates exploration, development and production in the sector and the Ugandan National Oil Company (UNOC) handles the commercial aspects of the sector and the participating interests of the State.

In 2014, the Parliament of Uganda approved the Board of Directors for the Petroleum Authority and the Uganda National Oil Company. The Petroleum Directorate was established and the Acting Director of the Directorate appointed in 2016.

The Government of Uganda incorporated the National Oil Company under the Companies Act, 2012, on 12 June 2015 under the name, Uganda National Oil Company Limited.

The incorporation of the company is a step forward in taking the oil sector to the next stage of production following years of exploration. In accordance with the National Oil & Gas Policy and the Petroleum (Exploration, Development and Production) Act, the company will be responsible for handling the state's share of petroleum, managing the business aspects of state participation, and developing in-depth expertise in the oil & gas industry.

Other functions of the National Oil Company 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 & gas industry;
- Optimizing value for shareholders, administer contracts with joint venture, participate in meetings of licences; and
- Investigating and proposing new upstream, midstream, and downstream ventures both locally and internationally.

The National Oil Company is a wholly owned state enterprise incorporated under the Companies Act and managed in accordance with the Companies Act, the Petroleum (Exploration, Development and Production) Act 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 as well as other laws governing state enterprises.

Under the new Acts, the Government has powers to enter into agreements relating to petroleum activities with any person. The Minister of Energy and Mineral Development will be responsible for granting and revoking of 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.

The regulations are as follows:

a. The Petroleum (Refining, Conversion, Transmission and Midstream Storage) National Content Regulations 2016;
b. The Petroleum (Exploration, Development and Production) National Content Regulations 2016;
c. The Petroleum Exploration, Development and Production) Metering Regulations 2016;
d. The Petroleum (Exploration, Development and Production) Health and Safety and Environment Regulations 2016;
e. The Petroleum (Exploration, Development and Production) Regulations 2016; and
f. The Petroleum (Refinery, Conversion, Transmission, Midstream and Storage) Health, Safety and Environment Regulations 2016.

Key regulators

- Ministry of Energy and Mineral Development (MEMD) and the Petroleum Authority: the implementation and regulation of petroleum resources is the mandate of the Petroleum Authority which is under the MEMD. Under the provisions of the Petroleum (Exploration, Development and Production) Act, 2013 the Petroleum Authority (Authority) has taken over the functions of regulating the sector originally performed by the PEPD.
- Uganda Revenue Authority: administering collection of revenue from the oil & gas sector in accordance with the relevant laws; monitoring and assessing the impact of oil revenues in the economy; and participating in the formulation of tax measures to regulate collection of the correct revenues from oil & gas activities.
- The Central Bank: managing and administering the Petroleum Fund; and advising the Government on the impact of the petroleum sector on the economy to ensure that oil & gas activities do not impact negatively on the monetary policy and macroeconomic stability.
- National Environment Management Authority (NEMA): coordinating processes of environmental impact assessment for the sector; environmental monitoring and audits of the sector; issuing environmental guidelines and ensuring compliance of the sector with environmental guidelines and international standards.
- Uganda Wildlife Authority: monitoring impact of oil & gas activities on wildlife protected areas and compliance to regulations governing operations in wildlife protected areas; participating in evaluation of environmental impact assessments and environmental audits; and issuing consents to undertaking operations in wildlife protected areas.
- The office of the Auditor General: providing independent oversight of the Government's operations through financial and other management audits in accordance with the Constitution and other relevant legislation; and ensuring adherence to national and international accounting standards.
- Other Government Ministries and Agencies: all ministries that are responsible for policies relevant to oil & gas, and agencies dealing with implementation and regulation will be responsible for guiding and monitoring the work of operational and managerial agencies placed under them. These include Ministry responsible for Justice and Constitutional Affairs; Ministry responsible for Finance, Planning and Economic Development; Ministry responsible for Water and Environment; Ministry responsible for Forests and Wetlands; Ministry responsible for Tourism and Wildlife; Ministry responsible for Labor; Ministry responsible for Trade and Industry; Ministry responsible for Education.

The Uganda National Oil Company Limited ("UNOC") appointed the first Chief Executive Officer ("CEO") effective 1 August 2016. The CEO will lead the setting up of the UNOC and manage its transformation into a world class oil & gas company as Uganda prepares for commercial oil production. The UNOC is responsible for managing Government's interest in the Production Sharing Agreements with the licenced oil companies.

The first Executive Director of the Petroleum Authority of Uganda ("PAU") was appointed on 18 August 2016,

following a recommendation by the Board of Directors of PAU. The function of PAU is to monitor and regulate exploration, development and production of the petroleum in Uganda. These roles were carried out by the Ministry of Energy and Mineral Development and have been taken over by the Authority.

Forms of Petroleum 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 ca only be renewed twice. In the old Act a licence was granted for a period not exceeding 4 years from the date of grant of the licence. Holders of petroleum licences may apply for renewal of the petroleum exploration licence, not later than ninety days before the licence is due to expire.
- A Petroleum Production licence is granted to the holder of a petroleum exploration licence, who has made a discovery of petroleum in an exploration area over any block or blocks in the areas which, following appraisal, can be shown to contain a petroleum reservoir or part of a petroleum reservoir. A production licence confers on the licencee exclusive rights to carry on petroleum activities in the licence area. However, a person may apply for the grant of a petroleum production licence in respect of a block or blocks or part thereof which, the person satisfies to the Minister, contains a petroleum reservoir or part of a petroleum reservoir notwithstanding that the person does not hold a petroleum exploration licence in respect of that block.

Forms of contracts

The Government of Uganda has 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.

There is a new model PSA that is currently the subject of discussion between the Government of Uganda and the four new companies that were selected from the new licensing round. However, the model PSA is not a public document.

Government participation

According to the Petroleum (Exploration, Development and Production) Act, 2013, the Government may participate in petroleum activities through a specified participating interest of a 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 & 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 (licencee). Generally, in the upstream sector a significant amount of the activities are subcontracted 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.

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. The first phase of production is expected to produce at least 30,000 barrels a day of refined fuel products such as diesel, gasoline and kerosene for supply to the domestic market which is anticipated to eventually increase to 60,000 barrels. Up to 70% of the financing of the refinery will be through debt and 30% as equity from the project partners.

Construction of the refinery in Uganda is expected to address the issue of transporting waxy and heavy oil in its crude form. This will reduce the costs associated with oil transportation such as heating pipelines at several points. The Government of Uganda and Tanzania agreed to develop and construct a crude oil pipeline from Hoima in Uganda to Tanga in Tanzania. The Inter-Governmental Agreement for the construction of the East African Crude Oil Pipeline was signed in May 2017. A special-purpose company will be formed to run the pipeline in which oil companies and the two governments will have shares. The construction cost estimates are set at $3.5 billion and the pipeline will transport 200,000 drums of oil per day.

Downstream

Downstream activities are regulated by the Petroleum Supply Act, 2003. This Act provides for the supervision and monitoring, importation, exportation, transportation, processing, supply, storage, distribution and marketing of petroleum products.

Capital investment regulations

The Investment Code of Uganda requires any investor operating a business in Uganda to be in possession of an investment licence issued by the Uganda Investment Authority. A foreign investor is

defined as a company having majority shares held by non-Ugandans or a company controlled by non-Ugandans.

Local content requirements

There are two regulations (specific to the petroleum sector) in respect of national content, namely:

a. The Petroleum (Refining, Conversion, Transmission and Midstream Storage) National Content Regulations 2016;
b. The Petroleum (Exploration, Development and Production) National Content Regulations 2016;

The above regulations operationalize the local content provisions within the petroleum acts for upstream and midstream.

The local content regulations apply to both the oil & gas (O&G) exploration and production (E&P) licensees and the OFS. Key highlights include:

- The requirement to employ at least 70% Ugandans and a succession plan for the expatriates employed.
- The requirement for OFS companies to register a Ugandan subsidiary or form a JV with a Ugandan company.
- In the case of a JV, the Ugandan company must hold at least 48% of the shareholding.
- The requirement to use available local raw materials and supplies.
- Ring fencing of specific goods and services to be provided by Ugandans and Ugandan companies.

The local content policy was also adopted as final in 2018 and is now operational. It remains unclear as to whether the new policy will impact the existing regulations.

More recently, The National Local Content Act 2019 ("the Act") was passed by Parliament in May 2020 but has yet to come into force pending Presidential assent.

The objective of the Act is to impose local content obligations on all persons using public money, utilising Uganda's natural resources or carrying on an activity requiring a license. The overall aim is to prioritise Ugandan citizens and companies in the performance of such activities. The provisions of this Act are subject to the provisions of the national/local content provisions contained in the Petroleum (Exploration, Development and Production) Act 2013, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) National Content Regulations 2016.

The Act defines local content to include *"the quantum or percentage of locally produced goods, locally produced services and the utilisation of personnel, financing, goods and services by a local content entity in any operation or activity carried out in Uganda".*

A local content entity is defined to mean "*Government, including a government, Ministry, Department, Authority, Local Authority, Local Government, statutory body or agency*". It also includes a natural or artificial person, a partnership or any other entity contracted by a local content entity carrying on an activity under the Act.

Some of the specific requirements in the Act are set out below.

a) Requirement to prioritise Ugandan goods and services

The Act places an obligation on a local content entity to give preference to goods manufactured and services produced in Uganda. Exception is made where such goods or services do not meet the required quality, quantity or timeline for delivery or completion. In such case the local content entity must ensure that the required goods or services are provided by an entity that has a joint venture with a Ugandan company or citizen. Important to note is that a local content entity cannot reject locally manufactured goods or services provided by a Ugandan citizen solely on grounds of quality, where:

- in the case of goods, they been approved by the national standards agency or through an international standards agency;
- in the case of services, they have been provided in accordance with best industry practices; and
- in the case of manufactured goods, the provider is willing to meet the required quality and time.

Similarly, rejection on the basis of the price of a good or service is prohibited if the price is competitive within five percent (there is scope for negotiation) or the same can only be procured in Uganda.

b) Employment of Ugandan citizens

All persons to whom the Act applies are bound to employ Ugandans and can only employ non-citizens after it has been certified by the Department that there are no Ugandans capable of performing the work. Where a non-citizen has been approved for a position, the law requires that provision is made for skills transfer and the entity must submit a succession plan in respect to the role performed by the non-citizen.

c) Subcontracting of contracts and public works

The Act expressly prohibits subcontracting of any contract or works contracted under the Act. It also sets out a mandatory requirement for foreign entities to subcontract 40% of contracted works to a Ugandan company that meets the criteria set out in Section 16 (i.e. if it is not a subsidiary or is not owned or does not form part of the same company group as the entity subcontracting its obligations, if

it is not an agent of the entity subcontracting its obligations, if it is registered as a Ugandan company and has complied with all its tax obligations and obtained a tax clearance from the relevant tax body, etc.)

However, liability for the subcontracted work still rests with the contracting party and not the subcontractor.

d) Local content plan

It is a mandatory requirement under the Act for every supplier, contractor or provider to develop a local content plan. These plans should be submitted for approval within six months of the commencement of the Act.

Financing considerations (Thin Capitalisation)

Effective 1 July 2018, the previous thin capitalization rules which were based on a debt to equity ratio were repealed and replaced by a provision based on tax Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) (EBITDA).

Previously the general thin capitalization rules in Uganda provided for a debt to equity ratio of 1.5:1. Therefore a tax deduction was disallowed for interest paid by a company on that part of the debt which exceeded the 1.5 to 1 foreign debt to foreign equity ratio. Based on the new amendment, the deduction of interest is limited to 30% the EBITDA and the balance of 70% is carried forward for a maximum of three years. After the limit of three years, no tax deduction is allowed for that part of the interest that remains unutilised.

Taxation regime

Basis of taxation

The taxation of petroleum operations in Uganda is based on the concept of economic rent. Economic rent theory focuses on the produce of the earth derived from labor and capital. Rent theory deals with how this produce is divided among the laborers, owners of the capital and landowners through wages, profit and rent. Therefore, economic rent in the petroleum industry is the difference between the value of production and the costs to extract it.

In Uganda, 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.

Based on the above, provided a contractor and/or subcontractor is carrying on a business in Uganda, the income they will derive from these operations will be subject to tax in accordance to the provisions of the Uganda tax laws.

Taxation of petroleum operations

Royalties and cost oil are deducted from gross production in arriving at profit oil which is shared between the government and the contractors according to the terms of the PSA. Contractors are then taxed on their gross income (being the sum of cost oil, their share of the profit oil and any credits earned from petroleum operations) adjusted for allowed deductions in accordance with the ITA. The rate of tax applicable to the contractor's share of the taxable profit is the standard corporation tax of 30%.

Part IXA of the ITA contains special provisions relating to the taxation of petroleum operations. Significant changes were made to this part effective 1 July 2015 and these have been included in this publication. The taxing provisions contained in this part of the ITA prevail over provisions in other parts of the ITA and any petroleum agreement, in case of any inconsistency.

Tax allowable expenditures which are deductible from gross income include:

- petroleum exploration expenditure for the year of income and allowed deductions for amortization of intangible assets;
- the allowable deductions for depreciation of petroleum development expenditures for the year of income;
- the amount of any operating loss from previous years of income, determined in accordance with the ITA;
- Decommissioning expenditure.

Key tax amendments which affect the oil & gas industry effective 1 July 2020

(i) Amendment to the 2018 investment incentives

Section 21(1) (af) has been amended to provide more clarity on the application of the tax exemption for new investment in certain manufacturing and strategic sectors, as introduced in 2018. The changes will be effective retrospectively from 1 July 2019. The amendment expands the list of businesses that qualify for the exemption to include manufacturers of tyres, footwear, mattresses and toothpaste. The criteria for the exemption are amended by:

- requiring the investor to employ at least 70% Ugandan citizens earning an average wage of at least 70% of the total wage bill (previously there was no local employment requirement and a 60% requirement.
- requiring use of 70% locally sourced raw materials
- reducing the investment threshold for citizens from USD 1 million to USD 300,000 generally or USD 100,000 for investments located up-country.

The prior exemption was for a fixed period of 10 years, but the revised wording indicates that the exemption period is now unlimited.

Persons that seek to benefit from the exemption are now required to declare in their tax returns the qualifying income and related expenses, calculated according to a prescribed formula.

II. Withholding Tax of 10% on commissions paid to insurance and advertising agents

Commissions paid by an insurance company to an insurance agent and commissions paid by any person to an advertising agent will be subject to 10% withholding tax. Currently such payments are subject to 6% withholding tax where paid by a designated withholding agent.

Whereas an insurance agent is defined in the Insurance Act, there is currently no definition of an advertising agent. It is therefore not clear who will be taxable as an advertising agent and whether the WHT will be a final tax.

III. Electronic Fiscal Receipting and Invoicing System (EFRIS)

EFRIS was implemented with application to all VAT registered taxpayers with effect from 1 July 2020. The implementation date was subsequently deferred to 1 January 2021.

EFRIS is an automated compliance system initiated by the URA as part of its Domestic Revenue Mobilisation Strategy which is intended to manage the issuance and centralised tracking of all invoices and receipts by business taxpayers in Uganda. When a transaction is initiated using one of the prescribed EFRIS methods, transaction details are transmitted to URA's back end system for fiscalisation to produce electronic fiscal documents (i.e. e- receipts and e-invoices). E-invoices and e-receipts are required to be issued in a prescribed format in accordance with the related Regulations. In addition to the compliance aspects, claimed benefits for the system include the ability for purchasers to check the validity of documents in real time and simplifying the preparation of VAT returns.

In conjunction with the implementation, amendments to the 2020 Income Tax Act and VAT Act effective from the same date require any person purchasing goods or services from a VAT-registered taxpayer to hold an e-receipt or e-invoice to in order to claim an income tax deduction or VAT input tax credit.

IV. Withholding tax exemption list

The URA has instituted a new online application process for taxpayers to be included on the WHT exemption list. The exemption period was extended to one year (previously 6 months) with the first such period being from 1 July 2020 to 30 June 2021.

The URA has given the following criteria to be considered for granting of the exemption, amongst others:

- Accuracy of filed returns of all applicable tax heads for both the entity and its directors;
- Up to date payment of all taxes due;
- No fraud record relating to tax;
- Compliance with customs laws and procedures;
- Non-existence of aggressive tax planning schemes bordering on tax evasion;
- Compliance with tax enhancement measures such as Digital Tax Stamps (DTS) and Electronic
- Use of approved tax agents and licensed customs clearing agents.

There is a formal appeal process if the taxpayer's initial application is denied. The URA reserves the right to automatically revoke the exemption if the entity or its directors fail to consistently comply with their tax obligations or commits tax fraud or evasion during the exemption period.

V. VAT Withholding

The Government has indicated its intention in the current fiscal year to gazette the list of VAT withholding tax agents to bring into effect the modified VAT withholding tax regime, as originally enacted in 2019.

Under this regime a designated VAT withholding agent is required to withhold 6% VAT (out of the standard 18%) and remit this to the URA on a monthly basis. The payee is then entitled to claim the withheld amount as a credit in its VAT return.

The withholding does not apply to suppliers who are on the VAT withholding exemption list, which is operated in a similar manner to the WHT exemption list but with the exemption granted more sparingly.

VI. Other amendments

- The list of exempt supplies in the Second Schedule of the VAT Act was expanded to include disposal medical face masks, medical boots, oxygen cylinders, disinfectants or sanitisers, supply of services to conduct a feasibility study design and construction, the supply of locally produced materials, infrastructure, machinery and equipment or furnishings and fittings which are not manufactured on the local market to a hotel or tourism facility developer whose investment capital is USD 10 million or to meetings, incentives, conferences and exhibition facility developer whose investment capital is not less than USD 3,000 etc.
- Excise duty- There have been a number of changes in excise duty rates including increases on fuel from July 2020 (i.e motor spirit (gasoline) from UGX 1,200 per litre to UGX 1,350 per litre, Gas Oil (automotive, light amber for high speed engine) from UGX 880 per litre to UGX 1,030 per litre).
- Stamp duty rates- Changes in the rates include introduction of stamp duty on professional certificates (UGX 100,000), loan agreements, debentures, equitable mortgages (Nil), bank guarantees, insurance performance bonds, indemnity bonds and similar debt instruments (changed from 1% to a flat rate of UGX 100,000).
- The government fees for a special pass are now set at a flat USD 100 regardless of the period.

Principle of ring fencing

Each contract area of a contractor is taxed as if it is a separate taxpayer (that is it is ring fenced). Ring fencing puts a limitation on consolidation of income and deductions for tax purposes across different activities or different projects, undertaken by the same taxpayer. Tax deductible costs or expenditure incurred in respect of a contractor's petroleum exploration and development expenditure in one contract area or block or oil field are only deducted from income derived from that contract area only.

Withholding taxes

Participation dividends are subject to a withholding tax of 15%. Also, payments made by contractors to non-resident subcontractors for services are subject to withholding tax at the rate of 10%. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favorable Double Taxation Agreement, if directly related to petroleum operators under a petroleum agreement. But where a resident shareholder controls at least 25% of the voting power in the petroleum company, withholding tax is not deductible on dividend paid to such shareholder.

All contractors are designated persons and are required to withhold tax on payments to a resident person unless the resident person is exempt. Therefore, payments by a contractor to a resident subcontractor in respect of a right to use any tangible moveable property in Uganda are subject to withholding tax at the rate of 6%.

According to section 119 of the ITA a contractor paying an amount or amounts in aggregate of UShs 1,000,000 to a resident person in Uganda for the supply of goods or services should withhold tax from the payment where the supplier of goods and services is not exempted from withholding tax.
Contractors are also required to withhold tax on payments to non-residents in respect of services rendered or provided to them in Uganda at the rate of 6%.

Tax withheld must be paid to the Uganda Revenue Authority (URA) within 15 days after the end of the month in which the payment subject to withholding tax was made. Failure to withhold tax makes the contractor personally liable to the tax to the URA. The contractor is required to maintain, and keep available for inspection by the Commissioner, records showing payments made to a payee and tax withheld from those payments.

There are specific provisions for taxation of contractors. A non-resident contractor who derives a fee for provision of services/ service fee to a licencee is liable to pay non- resident contractor tax at 10% which is final tax. Licencees are required to withhold tax at the earlier of the time they credit the service fee to the account of the non-resident contractors or at the time of actual payment.

Double Tax Treaties (DTT)

There are 9 DTTs which have not changed. There has been a change in the limitation of benefits clause effective 1 July 2016. A resident of a country with which Uganda has a DTT may only benefit from the treaty if they receive the income from Uganda in the capacity of

beneficial owner (with full and unrestricted ability to enjoy the income and determine its future uses) and if they possess economic substance in the country of residence.

Capital gains tax (CGT)

A capital gain derived from disposal of an interest in a petroleum agreement is subject to tax at the rate of 30%. The gain is computed by comparing the proceeds to the cost base. The cost base is defined as the amount paid or incurred by the taxpayer in respect of the interest including incidental expenditures of a capital nature incurred in acquiring the interest and includes the market value at the date of acquisition of any consideration in kind given for the asset.

Consideration for capital gains tax purposes is defined as the excess of the amount of money received (including the value of work undertaken by the transferee in respect of the part of the interest retained by the transferor) over any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest. The part of the consideration attributed to the allowed deductions to the transferor is treated as recouped expenditure and is taxed as income in the year of income in which is received.

For indirect transfers involving a non-resident transferor, resident contractor is liable for the tax as an agent of the non-resident transferor.

The compliance requirements are governed by Section 89 GE.

Section 89 (1) GE lists the conditions to be met for a transfer of an interest to be considered a farm out that is:

a. the existence of an agreement between the transferor or licensee and a transferee for transfer of part of the interest.
b. The transferee must include as part of the consideration a commitment to undertake part or all of the work commitments of the transferor in respect of the part of interest retained by transferor.

The capital gains arising from disposal of an interest in a petroleum agreement is subject to tax of 30%. There is a requirement to notify the URA in writing by the person disposing of an interest where there is a change in the underlying ownership of the licensee. The resident licensee is liable to tax as the agent of the non-resident person. The disposal of an interest in immovable property located in Uganda by a non-resident person is viewed as a disposal giving rise to tax in Uganda which is subject to capital gains tax.

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.

- **Services rendered by non-residents**

  A supply of services takes place where the services are rendered. Therefore, where services are rendered locally in Uganda through a branch, subsidiary or permanent establishment of any form, there is an obligation to register for VAT in Uganda.

  On the other hand, if the contractor is making the payment for services rendered directly to the non-resident sub contractor’s offshore head office as opposed to paying for them locally, the contractor may be required to treat the services as imported from outside Uganda and therefore account for reverse VAT on the payment for the services if the services are not exempt. Services are said to be imported from outside Uganda if they are supplied by a foreign supplier to a contractor in Uganda.

  Effective 1 July 2015, output VAT on imported services is recoverable as input VAT

- **VAT on equipment, plant and machinery**

  Machinery and inputs for direct and exclusive use in the petroleum exploration and development is exempt from VAT but the exemption only applies at the time of importation of the goods into Uganda as a result of the Fifth Schedule of the EACMA. This means that the local supply of such machinery by way of sale, lease or hire by a local supplier (subcontractor) to a contractor does not qualify as a VAT exempt supply unless the equipment being supplied is specifically exempt from VAT and listed in the Second Schedule of VAT Act. As a result,

- when one imports the equipment, no VAT applies, but when one buys, leases or hires the equipment locally, VAT is payable.

  In order for a contractor to benefit from the VAT exemption they must import the goods themselves or be the consignees of the goods at the time of importation of the goods into Uganda. Hiring the goods from a subcontracting and paying lease, hire or rental fees would give rise to VAT as they are VATable. Further, the goods must be considered to be machinery and input for direct and exclusive use in oil & gas exploration and development activities.

  Currently, there is no exemption from both VAT and Custom duties on imports of the goods and equipment required for the construction of the pipeline and/or refinery. This will obviously increase the overall cost of the midstream operations if the position is not reviewed by the Government

- **VAT on importation of petroleum fuels**

  According to the VAT Act, petroleum fuels subject to excise duty (that is motor spirit, kerosene and gas oil), spirit type jet fuel, kerosene type jet fuel and residual oils for use in the thermal power generation to the national grid are all exempt from duty. All these products are currently imported from outside Uganda.

Compliance requirements

The applicable VAT rate is 18%. The VAT Act allows for voluntary registration of entities undertaking upstream and midstream operations in the petroleum sector (including refining, conversion, transmission and storage) regardless of whether they are making taxable supplies.

Further the law allows licensees and contractors to claim input VAT in respect of imported services which results in a nil net VAT payable position in respect of imported services. This is an incentive to the oil & gas sector as VAT on imported services is a cost to other sectors of the economy (other entities providing business process outsourcing services).

Compliance requirements are governed by the Tax Procedure Code Act (TPC) 2014 which consolidates all administrative sections for specific tax laws including VAT Act. Monthly VAT returns filing, and payment are due within 15 days after the end of each month.

Custom duties

Machinery and inputs for direct and exclusive use in the petroleum exploration and development are exempt from import duties. In order for a contractor to benefit from this exemption, the contractor itself must import the goods, or be the consignees of the goods at the time of importation of the goods into Uganda.

There has been an amendment to the customs duty exemption (contained in the East African Customs Management Act) effective 1 July 2017. The exemption now applies to equipment and inputs, other than motor vehicles, imported by a licenced company for direct and exclusive use in petroleum exploration, development and distribution. Previously the exemption covered machinery and inputs imported by a licenced company for direct and exclusive use in petroleum exploration and development.

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.

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

Profit repatriation issues

Participation dividends are subject to a withholding tax of 15%. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favorable Double Taxation Agreement. For branches, a tax is charged at the rate of 15% on repatriated profits. Repatriated profits are computed according to the following formula:
A + (B – C) – D

Where

- A is the total cost base of assets, net of liabilities, of the branch at the commencement of the year of income;
- B is the net profit of the branch for the year of income calculated in accordance with generally accepted accounting principles;
- C is the Ugandan tax payable on the chargeable income of the branch for the year of income; and
- D is the total cost base of assets, net of liabilities, of the branch at the end of the year of income.
- The rate of 15% applies irrespective of whether profits have been physically repatriated out of Uganda or not provided the above formula yields a positive result.

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.

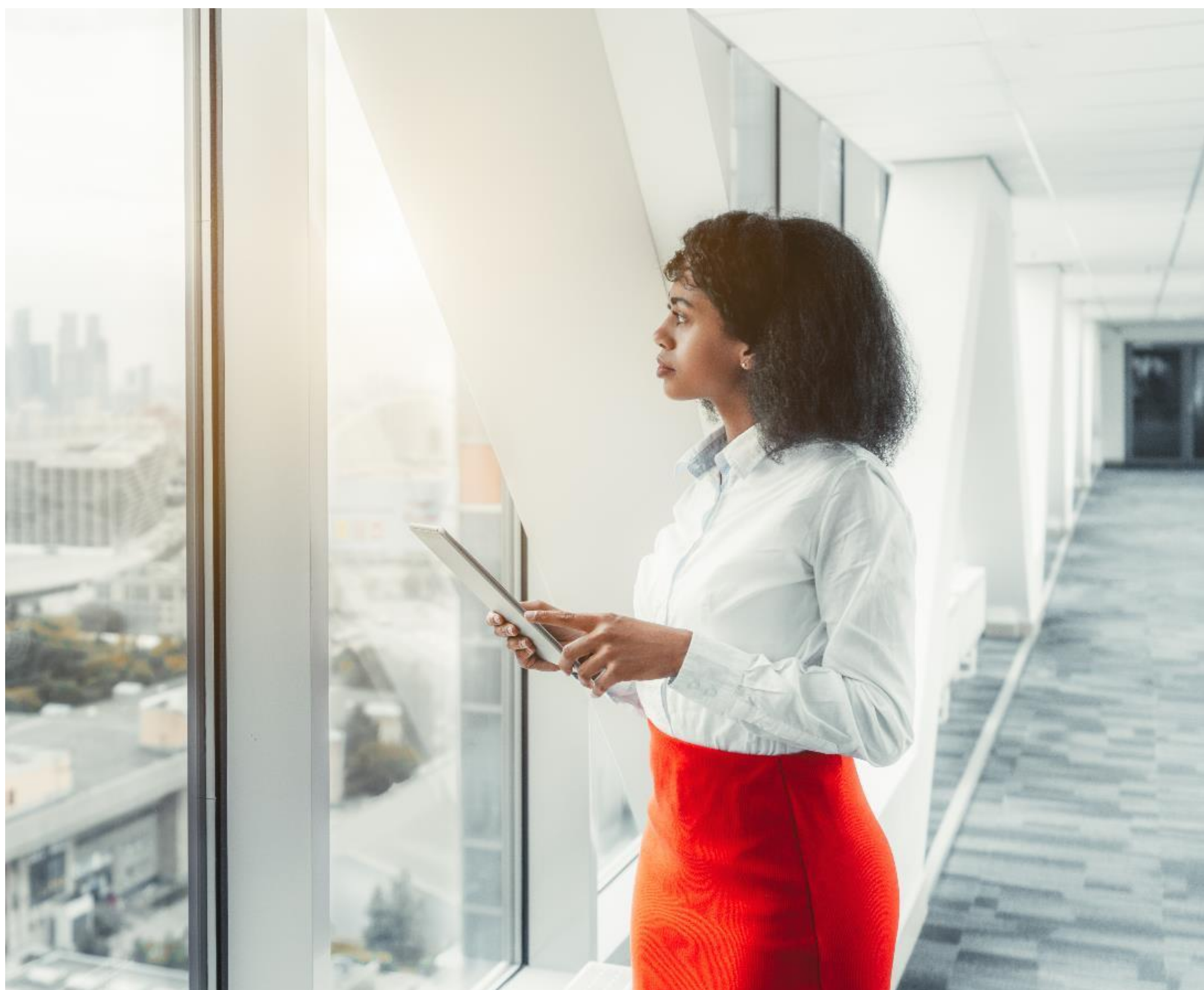
Employees whose only source of income is employment income derived from a single employer in Uganda are not required to file tax returns. The employer is required to withholding tax from the employee and pay the tax to the URA on the employee's behalf.

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)	NilNN Nil
Exceeding Ushs. 2,820,000(approx. USD1,000) but not exceeding U	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. USD 1,800)	Ushs. 120,000 (approx. USD 45) plus 20% of the amount by which chargeable income exceeds Ushs. 4,020,000

Chargeable income	Rate of tax
Not exceeding Ushs 2,820,000 (Approx. USD1,000)	NilNN Nil
Exceeding Ushs. 2,820,000(approx. USD1,000) but not exceeding U	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. USD 1,800)	Ushs. 120,000 (approx. USD 45) plus 20% of the amount by which chargeable income exceeds Ushs. 4,020,000



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