

**P.N.D.C.L. 188**

**PETROLEUM INCOME TAX ACT, 1987**

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*Capital Allowances***P.N.D.C.L. 188****PETROLEUM INCOME TAX ACT, 1987<sup>1</sup>**

**AN ACT to provide for the payment of tax on petroleum operations and for related matters.**

*Imposition of Tax and Ascertainment of Chargeable Income***1. Charge of tax**

A person conducting petroleum operations shall, subject to this Act, pay for each year of assessment a tax on chargeable income calculated in the manner provided in this Act.

1. The Act was issued as the Petroleum Income Tax Law, 1987 (P.N.D.C.L. 188) made on the 20th day of May, 1987, and notified in the *Gazette* on 4th September, 1987.

## 2. Ascertainment of chargeable income

(1) The chargeable income of a person conducting petroleum operations for a year of assessment from and after the year of commencement shall be calculated by deducting from the gross income of that person for that year the amounts specified in section 3.

(2) For the purpose of ascertaining the gross income, the income of that person from the sale of petroleum shall be taken into account at the selling price actually realised, and in the case of a sale to an affiliate or an export without sale at world market prices established in the manner provided for in the petroleum agreement to which that person is a party.

## 3. Deductions allowed in ascertaining chargeable income

(1) For the purpose of computing the chargeable income of a person for a year of assessment there shall be deducted the outgoings and expenses wholly, exclusively and necessarily incurred by that person for the purpose of petroleum operations during the year of assessment including,

- (a) rentals;
- (b) royalties;
- (c) sums of money payable by way of interest, fees or charges on money borrowed by that person, where the Commissioner is satisfied that the interest, fees or charges were payable on capital employed for the purpose of petroleum operations: but where in the opinion of the Commissioner, the rate of interest, fees or charges payable on the loans, are excessive by reference to the commercial rate for similar loans generally prevailing at the time the loan was made, the deduction shall be limited to the commercial rate;
- (d) the expense incurred for repair of premises, plant, machinery or fixtures employed for the purposes of petroleum operations or for the repair or alteration of the implements, utensils or articles so employed: but if the premises, plant, machinery, fixtures, implements, utensils or articles are employed in part for domestic or private purposes so much of the expenses that may be determined by the Commissioner to be in respect of those purposes shall not be deducted under the paragraph;
- (e) debts directly incurred in the conduct of petroleum operations and proved to the satisfaction of the Commissioner to have become bad or doubtful in the year of assessment in respect of which the chargeable income is being ascertained notwithstanding that the bad or doubtful debts were due and payable prior to the commencement of that year of assessment;
- (f) a contribution to a pension or provident fund or any other similar fund which is approved by the Commissioner;
- (g) the sums of money actually expended by that person in the education or training of citizens in approved educational or technical institutions (including attachment with that person) in an aspect of petroleum operations, or in the provision of scientific and educational materials and equipment pursuant to the terms of a petroleum agreement;
- (h) the sums of money representing a special carried interest allowance for that year of assessment including in the event that production from any development and production areas ceases, an amount which would have been re-

coverable from special carried interest allowance if production from that development and production area to which the allowance relates had not ceased before the sum of money advanced in respect of Corporation participation had been freely reimbursed;

(i) any other deductions that may be prescribed by a rule made under subsection (7) of this section.

(2) For the purposes of paragraph (e) of subsection (1),

(a) the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during the year of assessment nor in respect of a particular debt but shall include an amount deducted under this section in determining the chargeable income of a previous year of assessment;

(b) the sums of money recovered during the same year of assessment on account of amounts previously deducted in respect of bad or doubtful debts shall, for the purposes of this Act, be treated as income incidental to the operations for that year of assessment;

(c) it is proved to the satisfaction of the Commissioner that the debts in respect of which the deduction is claimed were either

(i) included as a receipt from the conduct of petroleum operations in the year of assessment in which they were incurred; or

(ii) advances made in the normal course of petroleum operations not falling within the provisions of section 4 (c).

(3) For the purposes of paragraph (f) of subsection (1),

(a) where the aggregate of the contribution of the employer and the employee to the pension or provident fund, for a year of assessment exceeds twenty-five percent of the remuneration paid by the employer to the employee for the year of assessment, the aggregate of the deductions to be allowed shall be twenty-five percent of the remuneration and in each case the Commissioner shall determine the amounts of the deductions to be allowed to the employer and the employees respectively;

(b) where the pension or provident fund is first established and a special contribution is made to the fund by the employer whereby persons in the employment whose employment commenced prior to the establishment of the fund may qualify for benefits under the fund in respect of the prior employment, the Commissioner may, when approving the fund, authorise the deductions in respect of the special contribution that the Commissioner considers fit.

(4) There shall be deducted, in computing the chargeable income of a person conducting petroleum operations for a year of assessment from and after the year of commencement, amounts allowable as capital allowance computed and allocated in the manner set forth in the Schedule.

(5) There shall be deducted, in computing the chargeable income of a person in a year of assessment after the year of commencement, the amount of a loss incurred by that person during any previous year of assessment.

(6) For the purposes of subsection (5),

- (a) a deduction under subsection (5) shall be made so far as possible in computing the amount of the chargeable income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made, then in computing the chargeable income of the immediately succeeding year of assessment and so on;
- (b) the aggregate deduction in respect of that loss shall not exceed the amount of the loss;
- (c) a deduction under subsection (5) shall not be made in respect of a loss incurred prior to the coming into force of this Act.

(7) The Minister may, by legislative instrument, prescribe rules and the method for calculating or estimating the deductions allowed or prescribed under this section.

#### 4. Deductions not allowed in ascertaining chargeable income

Subject to this Act, and without prejudice to the deduction of expenses provided for in section 3, for the purpose of ascertaining the chargeable income arising from petroleum operations of a person, a deduction shall not be allowed in respect of

- (a) domestic or private expense;
- (b) any disbursement or expenses not being wholly, exclusively and necessarily laid out or expended for the purpose of petroleum operations;
- (c) a capital withdrawn or a sum of money employed or intended to be employed as capital;
- (d) a capital employed in improvements;
- (e) a sum recoverable under an insurance policy or contract of indemnity;
- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purposes of petroleum operations;
- (g) the amounts of money paid or payable in respect of an income tax, profits tax or any other similar tax whether charged within the Republic or elsewhere;
- (h) the depreciation of the fixed assets including premises, buildings, structures or works of a permanent nature;
- (i) a contribution to a pension, provident or other similar fund not within the terms of section 3.

#### 5. Artificial or fictitious transactions

(1) Where the Commissioner is of the opinion that a transaction which reduces or would reduce the amount of tax payable by a person, is artificial or fictitious, the Commissioner may disregard that transaction and direct that the adjustments shall be made with regards to liability to tax that the Commissioner considers appropriate, so as to prevent the reduction of liability to tax effected, or the reduction which would otherwise be effected by the transaction, and the person concerned shall be assessed accordingly.

(2) For the purpose of subsection (1), the following transactions are artificial or fictitious:

- (a) transactions of which the main purpose or one of the main purposes, is, in the opinion of the Commissioner, the avoidance or reduction of liability to tax;
- (b) transactions between persons one of whom, has control over the other, or in the case of a natural person is related to the other, or transactions between persons both of whom are controlled by some other person which, in the opinion of the Commissioner have not been made on the terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arms length.

#### *Ascertainment of Chargeable Tax*

### **6. Chargeable tax**

The amount of tax payable under this Act by a person conducting petroleum operations in respect of a year of assessment or quarterly period shall be fifty percent of the chargeable income arising from the operations in respect of that year or period unless the petroleum agreement to which that person is a party makes alternative provision

- (a) for the payment of income tax at a different rate, or
- (b) for the payment of a tax in lieu of income tax or in lieu of income tax at the rate of fifty percent otherwise payable under this section.

#### *Persons Answerable for Chargeable Tax*

### **7. Managers, partners and principal officers**

(1) The manager or a principal officer in the Republic of a company or body of persons is answerable for doing the acts which are required to be done by virtue of this Act for the assessment of tax or provisional tax or both of the company or body and for the payment of those taxes.

(2) In the case of a partnership engaged in petroleum operations, the partner resident in the Republic, or if a partner is not resident in the Republic, the manager, is answerable for doing the acts that are required to be done by virtue of this Act and for the charge to tax of the partnership and for the payment of the tax.

### **8. Designating agents**

(1) Where a person is in possession of, or otherwise liable to pay any sums of money to or is in possession of any assets of a person chargeable to tax under this Act, the Commissioner may declare by notice in writing that person an agent in respect of the collection of the tax and that person shall pay the tax due from those assets or moneys including pensions, salaries, wages or any other remuneration in the possession or control of that person.

(2) For the purposes of subsection (1), the Commissioner may require a person to give information as to any moneys, funds or any other assets which may be held by, or due by, that person to any other person.

## **9. Indemnity**

A person answerable under this Act for the payment of tax or provisional tax or both on behalf of another person may retain out of any money or assets coming into the hands of that person or within the de facto control on behalf of the other person so much of the moneys or assets as shall be sufficient to pay the taxes; and shall be and is hereby indemnified against any other person for the payments made by that person in accordance with this Act.

## *Returns*

## **10. Annual returns**

(1) For a year of assessment a person engaged in petroleum operations whether or not chargeable with tax under this Act shall deliver to the Commissioner annual returns covering the year of assessment within four months after the end of the year of assessment.

(2) An annual return delivered under subsection (1) shall contain

- (a) a copy of the certified statement of accounts of the petroleum operations for the year of assessment audited before submission by an accountant who is a chartered or practicing accountant within the meaning of the Chartered Accountants Act, 1963 (Act 170),
- (b) an estimate of the tax due on the chargeable income computed,
- (c) a statement containing the full names, addresses, nationality, salaries, wages, fees, allowances and other remuneration of the employees in the Republic,
- (d) a statement of the amount of production of petroleum during the year of assessment and the share of that person in that production, and
- (e) a statement of the price paid for the sale or export without sale of that person's share of petroleum produced in that year of assessment in accordance with section 2.

(3) An annual return delivered under subsection (1) shall be accompanied by a signed declaration that the particulars given in the annual return or component statements are true and complete.

(4) A person chargeable with tax under this Act shall deliver along with the annual returns a remittance in settlement of the tax liability as computed in the returns of that person.

(5) Where there is a dispute as to the world market price applicable in respect of that person's share of petroleum produced for a period in the year of assessment, a return indicating the amount of chargeable income shall be computed by that person on the basis of the contractors proposed price.

(6) In the event of final determination of the price in accordance with the terms of a petroleum agreement there shall be submitted, pursuant to this section, fresh returns reflecting the determined price and the adjustments and payments of tax due in respect of that price.

(7) The returns shall be submitted within forty-five days of the final determination of the price.

### **11. Quarterly returns**

(1) A person engaged in petroleum operations shall, not later than thirty days after the expiry of a quarterly period, furnish or deliver to the Commissioner,

- (a) a return containing an estimate of the chargeable income resulting from the operations during that quarterly period, and
- (b) an estimate of tax due on the chargeable income computed and a remittance in settlement of the tax so computed.

(2) For the purpose of subsection (1), the Commissioner may issue to a person engaged in petroleum operations a supply of quarterly return forms and that person shall use the forms so supplied in furnishing returns pursuant to that subsection.

### **12. Extension of time and provisional returns**

(1) Where it is shown by a person to the satisfaction of the Commissioner that owing to a reasonable cause that person is not able to make a return required by sections 10 (1), 11 (1) or 14 within the time specified in those sections, the Commissioner may grant an extension of the time that the Commissioner considers necessary.

(2) Where under subsection (1) of this section an extension of the time specified in subsection (1) of section 11 is granted by the Commissioner, the person to whom the extension is granted shall within fourteen days of the granting of the extension, furnish a return based on an estimate of the chargeable income resulting from the petroleum income resulting from the petroleum operations in respect of which the return is required, to the best of the knowledge and belief of that person.

### **13. Calling for further information**

The Commissioner may give notice in writing to a person engaged in petroleum operations when and as often as the Commissioner thinks necessary requiring that person to furnish within the time limited by the notice fuller or further information as to any matters referred to in section 10 or to any matters which the Commissioner considers necessary for the purpose of this Act.

### **14. Additional returns**

(1) After an annual or quarterly return has been furnished in respect of a year of assessment or quarterly period respectively the Commissioner may, for the purpose of obtaining full information in respect of a person's chargeable income, give notice to that person requiring within the time limited by the notice, which time shall not be less than thirty days from the date of service of the notice, to complete and deliver to the Commissioner an additional return specified in the notice and in addition or alternatively requiring that person to attend and to produce for examination any books, documents, accounts and returns which the Commissioner considers necessary.



(2) If a person assessable to tax under this Act fails or refuses to keep books or accounts which, in the opinion of the Commissioner, are adequate for the purposes of ascertaining the chargeable tax, the Commissioner may by notice in writing require that person to keep the records, books and accounts that the Commissioner considers to be adequate in the form and in the language that the Commissioner may in the notice direct, and that person shall keep records, books and accounts as directed.

### 15. Entry to premises

(1) The Commissioner or a duly authorised agent of the Commissioner may, for the purpose of obtaining information which the Commissioner considers necessary in relation to the liability of a person to tax, enter any premises in the Republic at any time during the day, without previous notice, and search for moneys, assets, documents or records.

(2) In carrying out the search the Commissioner or the duly authorised agent may

- (a) open or cause to be removed and opened, an article in which it is considered that moneys, assets, documents or records may be contained;
- (b) seize the money or assets and the documents or records which it is considered may afford material evidence of the liability of a person to tax;
- (c) retain the moneys or assets and the documents or records or copies of those documents or records for the periods that may be reasonable for their examination or for the purposes of a prosecution or the recovery of the tax due.

(3) The Commissioner or the duly authorised agent conducting the search

- (a) shall make an inventory of, and issue receipts for, the moneys, assets, documents or records seized;
- (b) shall make copies of the documents or records and provide copies to the person from whose custody they were obtained.

(4) A person who prevents the Commissioner or the duly authorised agent from exercising the powers under subsection (1) commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units or to a term of imprisonment of not less than two years.<sup>2</sup>

(5) For the purposes of this section a person who, without reasonable cause or excuse, destroys or conceals a relevant document commits an offence and is liable on summary conviction to the fine or imprisonment specified in subsection (4).

### *Assessment*

#### 16. Assessments

(1) Subject to subsection (2), the Commissioner shall assess a person chargeable with tax for a year of assessment or with provisional tax for a quarterly period as soon as may be after

- (a) the receipt of returns filed by that person, or

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2. The words, "with hard labour" have been omitted as they offend article 15 of the Constitution.

(b) the expiry of the period (including extensions) for submission of the returns provided for in this Act; but where returns are made under section 12 (2) the Commissioner shall, pursuant to section 14 (1), call for additional returns from that person before making a final assessment.

(2) Where a person has delivered a statement or return the Commissioner may

(a) accept the statement or return and make an assessment accordingly, or

(b) refuse to accept the statement or return if the Commissioner is reasonably satisfied that the return or statement does not represent a true and accurate statement of the liability to tax of that person and proceed as provided in subsection (3) on a failure to deliver a statement or return and the like consequences shall ensue.

(3) Where a person has not delivered a statement or return

(a) within the time specified under section 10, 11 or 14,

(b) within an extended time under section 12 (1), or

(c) within the fourteen days specified in section 12 (2),

and the Commissioner is of opinion that that person is liable to pay tax or provisional tax, the Commissioner may estimate, according to the best of the judgement of the Commissioner, the amount of the chargeable tax to be paid by that person for the year of assessment or the quarterly period respectively for which the statement or return is required, and make an assessment accordingly.

(4) The assessment shall not affect a liability otherwise incurred by that person by reason of failure or neglect to deliver a statement or return.

(5) Subsections (3) and (4) shall not affect the right of the Commissioner to make an additional assessment under section 17 or to certify a repayment under section 25 if on ascertainment of the relevant facts it appears to the Commissioner that an additional assessment or repayment should be made.

### 17. Additional assessments

(1) If the Commissioner discovers or is of opinion at any time that a person liable to tax or provisional tax has not been assessed or has been assessed at an amount different from what that person ought to have been assessed at, the Commissioner may assess that person as often as may be necessary at the amount or additional amount that, according to the judgement of the Commissioner, ought to have been charged.

(2) In the event of a final determination of world market prices under section 10 (5) the Commissioner shall make a new or additional assessment as may be requisite to give effect to the final determination.

### 18. Record and notice of assessment

(1) The Commissioner shall, on assessing the tax or provisional tax payable by a person, enter the name and address of the person assessed, and the amount of the assessment and chargeable tax in an assessment record.

(2) The Commissioner shall, in respect of each assessment, cause to be served on the person assessed, a notice of assessment stating the amount of chargeable income liable to tax or to provisional tax charged, the place at which, and the time by which payment of an outstanding amount of the tax or provisional tax should be made and informing that person of the rights of appeal under sections 19, 20 and 21.

(3) An assessment under section 16 or an additional assessment under section 17 shall not be made later than four years from the end of the year of assessment or quarterly period to which the assessment or additional assessment relates.

### *Objections and Appeals*

#### **19. Objections and review**

(1) A person who disputes an assessment made on that person in accordance with this Act may apply to the Commissioner to review and revise the assessment.

(2) The application shall be by written notice stating the precise grounds of objection, and shall be made within thirty days from the date of the service of the notice of the assessment and shall state the amount of chargeable income made by that person during the year of assessment and the amount of tax which that person claims should be charged.

(3) The Commissioner on being satisfied that owing to the absence from the Republic, sickness or any other reasonable cause, the person disputing the assessment was prevented from making the application within the period specified in subsection (2) shall extend the period as may be reasonable in the circumstances.

(4) After receipt of a notice of objection referred to in subsection (1), the Commissioner may within the time and at the place that the Commissioner shall specify, require the person giving the notice of objection to furnish the particulars that the Commissioner considers necessary, and may by notice, within that time and at the place that the Commissioner shall specify, require a person to give evidence orally or in writing respecting the matters necessary for the ascertainment of the tax or provisional tax payable.

(5) The Commissioner may require evidence if given orally to be given on oath or if given in writing to be given by statutory declaration.

(6) In the event of a person, who has objected to an assessment agreeing with the Commissioner as to the amount for which that person is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax or provisional tax under the amended assessment shall be served on that person.

(7) If a person who has objected to an assessment fails to agree with the Commissioner in the manner provided in subsection (6), the Commissioner shall give that person notice of refusal to amend the assessment as desired by that person or may amend that assessment if satisfied that the assessment is in any event excessive by some amount by reducing it by that amount, and notice of the amended assessment showing the tax or provisional tax payable shall be served on that person together with the notice of refusal.

**20. Appeals to the Revenue Commissioners**

*Omitted.*<sup>3</sup>

**21. Appeals to the Supreme Court**

*Omitted.*<sup>4</sup>

**22. Assessment final and conclusive**

(1) Except as expressly provided in this Act,

- (a) where an objection has not been lodged against an assessment under subsections (1), (2) and (3) of section 19, or
- (b) where the amount to be assessed has been agreed to under section 19 (6), or
- (c) where after the determination of an objection made under section 19 (7) whether the assessment was reduced or otherwise, an appeal to the Revenue Commissioners has not been made under section 20, or
- (d) where the appeal has been determined by the Revenue Commissioners and a further appeal is not taken, or
- (e) where the amount has been determined on appeal,

the assessment as made, or agreed to, or reduced, or determined, is final and conclusive for the purposes of this Act as regards the amount of the assessment.

(2) Where an application to the Revenue Commissioners has been brought against an assessment and then withdrawn the assessment as made or reduced by the Commissioner is final and conclusive for the purposes of this Act.

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3. The Serious Fraud Office Act, 1993 (Act 466) dissolved the office of the Revenue Commissioners and repealed the Revenue Commissioner Law, 1984 (P.N.D.C.L. 80). The section reads,

- "(1) A person who is aggrieved by a notice of refusal, or is dissatisfied with an assessment, whether amended under section 19 (7) or not, may appeal to the Revenue Commissioners against the assessment or amended assessment on giving notice in writing to the Commissioner within thirty days after the date of service on that person by the Commissioner of notice of refusal to amend the assessment under section 19 (7).
- (2) Despite the lapse of the period of thirty days, a person may bring an application against an assessment or amended assessment if that person shows to the satisfaction of the Revenue Commissioners that, owing to absence from the Republic, sickness or any other reasonable cause that person was prevented from giving notice of the application within the period, and that there has not been an unreasonable delay on the part of that person.
- (3) The onus of proving that the assessment complained of is excessive is on the appellant.
- (4) The Revenue Commissioners may confirm, reduce, increase, or annul the assessment or make an order that the Revenue Commissioners consider fit.
- (5) Notice of the amount of tax payable under the assessment as determined by the Revenue Commissioners shall be served by the Commissioner either personally or by registered post on the appellant."

4. Omitted consequent on the dissolution of the Office of the Revenue Commissioner, by P.N.D.C.L. 80. The section provided for appeals from the Revenue Commissioners to the Supreme Court. Please *see* Internal Revenue Act, 2000 (Act 592).

(3) A provision of sections 19, 20, 21, or 22 does not prevent the Commissioner from making an assessment or additional assessment for a year of assessment which does not involve re-operating a matter, relating to that period, which has been determined on appeal by the Revenue Commissioners or the Supreme Court.

### *Collections, Recovery and Repayment of Tax*

#### **23. Determination of tax payable where objection pending**

(1) Where notice of objection has been given under section 19 the Commissioner shall decide what tax shall be paid pending the determination of the objection.

(2) The amount of tax to be paid by a person under subsection (1) shall not be less than fifty percent of the tax specified in the appropriate notice of assessment and shall be paid within the time that the Commissioner may specify by written notice.

(3) Where payment of a tax is held over pending the result of an objection, the tax outstanding under the assessment as determined in the objection is payable within thirty days after the date of service on the person assessed of the notification of the tax payable.

#### **24. Time for payment**

(1) Tax or provisional tax assessed in accordance with section 16 is payable subject to section 23, at the place stated in the notice of assessment, given under section 18 (2), within thirty days after the service of the notice.

(2) The Commissioner may where good cause is shown extend the period within which the tax or provisional tax shall be paid under subsection (1) to a period that the Commissioner considers fit.

#### **25. Suit for recovery of tax**

(1) Subject to sections 19, 20 and 21, and to article 88 of the Constitution, tax or provisional tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner in the official name with full costs of suit from the person charged with the tax as a debt due to the Government.

(2) A suit for tax payable and recoverable under this Act shall not be commenced later than twelve years from the date the tax is due.

(3) In a suit under subsection (1), the production of an extract from the assessment record verified under the hand of the Commissioner giving the name and address of the defendant and the amount of tax due is sufficient evidence of the amount so due and sufficient authority for the court to give judgement for the amount.

#### **26. Repayment of tax**

(1) If it is proved to the satisfaction of the Commissioner that a person has paid a tax in excess of the amount for which that person is liable under a final and conclusive determination that person is entitled to have the amount so paid in excess refunded.

(2) A claim for repayment under subsection (1) shall be made within six years from the final and conclusive determination of the amount of tax due in respect of the year of assessment to which the claim relates.

(3) The Commissioner shall give a certificate of the amount to be repaid and the repayment shall be effected in accordance with the certificate.

### *Subcontractors and Expatriate Employees*

#### **27. Withholding tax on amounts due to subcontractors**

(1) Where under the terms of a contract an amount due to a subcontractor in respect of work or services for or in connection with a petroleum agreement the person liable under that contract to make payment to the subcontractor shall withhold from the aggregate amount due to the subcontractor the percentage of the aggregate amount due that may be specified in the petroleum agreement and the amount so withheld shall be paid to the Commissioner and payment of that amount shall have the effect provided for in subsection (3).

(2) Subject to article 174 of the Constitution, the requirement of subsection (1) may be waived by the express terms of the petroleum agreement where the subcontractor is an affiliate of the contractor whose services are charged to the contractor at cost.

(3) When an amount has been withheld from an aggregate amount due to a subcontractor pursuant to subsection (1), the subcontractor is not liable, in respect of that aggregate amount, for tax under any other law in force in the Republic.

(4) The relevant provisions of the Internal Revenue Act, 2000 (Act 592) do not apply to a contract for the supply of goods or the provision of work or services for or in connection with petroleum operations.

(5) The relevant provisions of the Internal Revenue Act, 2000 (Act 592) do not apply to the calculation of the gains and profits of a person who is a non-resident subcontractor by reason only of the provision by the non-resident sub-contractor of work or services for or in connection with a petroleum agreement.

#### **28. Expatriate employee**

Unless, and to the extent that, a petroleum agreement provides in respect of an expatriate employee employed by a contractor or a subcontractor conducting exclusively petroleum operations, the gains or profits of the employee is liable to income tax and the withholding of tax under the laws of the Republic.

### *Administration*

#### **29. Administrative authority**

(1) This Act shall be administered by the Commissioner, who is responsible for the assessment and collection of the tax chargeable under this Act and the payment of the tax into the Consolidated Fund and article 176 of the Constitution.

(2) The Commissioner may in writing, or by notice in the *Gazette*, authorise a person to perform, or to assist in the performance of, a function imposed on the Commissioner by this Act.

(3) A person who has an official duty in the administration of this Act, or is employed for the purposes of the administration of this Act or is authorised under this section shall act in accordance with the lawful instructions of the Commissioner.

### 30. Obligations of secrecy

(1) A person having an official duty in the administration of this Act, and having possession of, or control over, the documents, accounts or information relating to petroleum operations and the amount and value of petroleum produced and saved by a person, who at any time communicates the information or anything contained in the documents or accounts to a person, other than a person to whom, there is authority by law to communicate it to, for the purpose of this Act or the Internal Revenue Act, 2000, (Act 592) commits an offence, and is liable on summary conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and imprisonment.

(2) Proceedings for an offence against subsection (1) may be taken by the Commissioner or any other person under the authority of the Attorney-General, in accordance with clause (4) of article 88 of the Constitution.

(3) The obligations as to secrecy imposed by this Act shall not prevent the disclosure to a person, authorised under section 29 to administer or to assist in the administration of this Act, of the facts that are necessary to enable the proper tax imposed by this Act to be assessed or collected.

(4) A person who by reason of this Act has possession of or control over the documents, accounts or information relating to petroleum operations and the amount and value of petroleum produced and saved by a person, has an official duty in the administration of this Act for the purposes of subsection (1).

### 31. Service of notice

(1) A notice may be served on a person

- (a) personally; or
- (b) by being left at the usual or last known place of abode of that person; or
- (c) by being sent through registered post, addressed to that person at the usual or last known business or private address including a post office box number or private post bag of that person; or
- (d) in the case of a company incorporated or registered in the Republic addressed to the manager of the company or a principal officer of the company in the Republic at the registered office of the company or at the principal place of business in the Republic of the company; or

- (e) in the case of a partnership, by being sent through the post to the usual or last known business or private address of a partner resident in the Republic, or if a partner is not resident in the Republic, to the usual or last known business or private address of the manager of the partnership business addressed to the partner or manager; or
- (f) in the case of a body of persons, addressed to that body at the last known business or other address of that body.

(2) A notice under this Act to be served by post shall be sent by registered post and shall be deemed to have been served on the day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course that the letter is awaiting the addressee.

(3) A notice to be given by the Commissioner under this Act shall be signed by the Commissioner or by a person authorised by the Commissioner for that purpose under section 29 (2), and a notice is valid if the signature of the Commissioner or of that person is duly printed or written on the notice.

### *Offences and Penalties*

#### **32. Failure to comply with notice or summons**

(1) A person who without reasonable excuse fails to comply with the requirements of a notice or summons served on that person under and in accordance with this Act within the time prescribed, commits an offence, and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

(2) In the case of a failure to comply with a notice requiring tax or provisional tax to be paid that person shall incur in addition a penalty of a sum of money equal to fifteen percent of the tax payable.

#### **33. Failure to make returns and falsification of returns**

(1) A person who without reasonable excuse

- (a) fails to make a return or statement in accordance with this Act, or
- (b) makes an incorrect return or statement which that person is required by this Act to make, or
- (c) gives an incorrect information in relation to a matter or thing affecting that person's liability, or the liability of any other person, to tax or provisional tax,

commits an offence, and is liable on summary conviction to pay a penalty double the amount of tax or provisional tax which has been undercharged in consequence of the incorrect return, statement or information, or which would have been so undercharged if the return, statement or information has been accepted as correct or which would have been charged if the return which should have been made, had been made.

(2) Where the offence is committed by a body corporate, every director and officer of that body shall be deemed to have committed that offence and on summary conviction is liable to the penalty provided for in subsection (1).



(3) A person shall not be convicted of an offence under subsection (2) if it is proved that the offence was committed without the knowledge of, or that due diligence to prevent the commission of the offence was exercised by, that person.

(4) A person is not liable to the penalty provided under this section unless proceedings for the recovery of the penalty were commenced within six years after the act or omission to which the penalty relates.

#### **34. Misrepresentation to obtain tax reduction**

(1) A person who for the purpose of obtaining a reduction in tax or provisional tax, for personal benefit or the benefit of any other person knowingly and wilfully misrepresents a fact relevant to the ascertainment of the tax commits an offence and is liable on summary conviction to a fine not exceeding seven hundred and fifty penalty units or to a term of imprisonment not exceeding four years or to both the fine and imprisonment.

(2) Where the offence is committed by a body corporate, every director and officer of that body shall be deemed to have committed that offence and is liable to the penalty provided for in subsection (1).

(3) A person shall not be convicted of an offence under subsection (2) if it is proved that the offence was committed without the knowledge of, or that due diligence to prevent the commission of the offence was exercised by, that person.

#### **35. Recovery of penalties**

(1) Pecuniary penalties, which are not fines, incurred under sections 32 and 33 may be sued for, enforced and recovered with full cost of suit in civil proceedings before the High Court.

(2) Proceedings for the recovery of a pecuniary penalty incurred under sections 32 and 33 do not relieve a person from liability to criminal proceedings in respect of the commission of an offence against this Act.

(3) Penalties under this Act received by the Commissioner shall be paid into the Consolidated Fund under article 176 of the Constitution.

#### **36. Tax payable despite proceedings**

The institution of proceedings against offenders under this Act does not relieve a person from that person's liability to pay a tax or provisional tax for which that person is or may become liable.

### *Miscellaneous*

#### **37. Regulations**

(1) The Minister may, by legislative instrument, make Regulations generally for the better carrying out of the provisions of this Act.

(2) The Commissioner may specify the form of returns, claims, statements, notices and applications to be made or given under this Act.

### 38. Interpretation

(1) A word or phrase to which a meaning has been attributed in the Petroleum (Exploration and Production) Act, 1984<sup>5</sup> shall, unless the context otherwise requires, be given the same meaning when used in this Act.

(2) In this Act, unless the context otherwise requires,

“**affiliate**” includes a company which holds not less than five percent of the share capital or voting rights in a company conducting petroleum operations and a company which controls, is controlled by, or is under common control with, a person conducting petroleum operations;

“**carried interest**” means an interest held by the Corporation in respect of which a contractor advances sums of money for the conduct of petroleum operations pursuant to the express terms of a petroleum agreement;

“**chargeable income**” means income ascertained as chargeable with tax for a year of assessment in accordance with this Act;

“**chargeable tax**” means a tax payable by virtue of section 6;

“**citizen**” means a citizen of the Republic;

“**Commissioner**” means the Commissioner of the Internal Revenue Service;

“**company**” means a person, firm, body corporate registered or incorporated in the Republic under the Companies Act, 1963 (Act 179);

“**Corporation**” means the Ghana National Petroleum Corporation established by the Ghana National Petroleum Corporation Act, 1965;<sup>6</sup>

“**contractor**” means a person which is a party to a petroleum agreement with the Republic and the Corporation made pursuant to section 5 (4) of the Petroleum (Exploration and Production) Act, 1984;<sup>7</sup>

“**expatriate employee**” means a person who is not a citizen of the Republic and who is employed for or in connection with the conduct of petroleum operations by a contractor or by a subcontractor under an express or implied contract of employment which provides for payment of passages to and from the Republic and in respect of whom, approval has been obtained from the Government for inclusion within the immigrant quota of the employer;

“**first quarterly period**” means the quarterly period within which a person commences petroleum operations under the terms of a petroleum agreement;

“**function**” includes powers and duties;

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5. P.N.D.C.L. 84.

6. P.N.D.C.L. 64.

7. P.N.D.C.L. 84.

**“gross income”** means in the case of a person conducting petroleum operations, the income derived by that person from the sale or export without sale of the petroleum to which that person is entitled under a petroleum agreement and income incidental to those operations before the making of the deductions for which provision is made in this Act for the purpose of calculating chargeable income; but that gross income does not include

- (a) any of the amounts referred to in paragraph 5 of the Schedule, or
- (b) consideration for an assignment falling under paragraph 7 of the Schedule;

**“loss”** means in relation to a year of assessment from and after the year of commencement, the amount by which deductions allowable under section 3 exceed gross income;

**“Minister”** means the Minister responsible for Finance;

**“person”** has the same meaning as in section 32 (1) of the Interpretation Act, 1960 (C.A. 4);

**“petroleum capital expenditure”** includes expenditure incurred in searching for and discovering petroleum, ascertaining and testing the extent and characteristics of petroleum and the installation of facilities for the production, gathering, transportation and sale or export or both of petroleum and

- (a) sums of money expended in the acquisition of an interest or a participating interest in a petroleum agreement, but not including an expenditure incurred after the year of commencement in or on an acquisition from a person who is conducting production of petroleum under a programme of continuous production and sale; and
- (b) expenditure including, where applicable intangible costs incurred on
  - (i) geological, geophysical, geochemical, aerial, magnetic, gravity, seismic and other surveys and the processing, analysis, interpretations and related studies;
  - (ii) drilling of shot holes, core holes, bore holes, water holes and holes for the discovery and delineation of petroleum reservoirs;
  - (iii) preparing for drilling, drilling, and maintaining exploration, appraisal, development and production wells whether the wells are producing or not, including the costs of labour, fuel, repairs, haulage and supplies, and materials without salvage value, incurred in drilling, shooting and cleaning wells; in clearing and draining ground, road making, surveying and other preparations for drilling, in constructing and erecting drilling rigs, drilling and production platforms, tanks, pipelines;
  - (iv) acquisition of petroleum information and the costs of the reservoir studies;
  - (v) the provision of plant, machinery and equipment including construction and erection of drilling rigs, drilling and production platforms and other plant, machinery, and equipment necessary for the exploration for, and the development and production of petroleum;

- (vi) the construction of any building, structures or works including the provision of residential accommodation and associated facilities for employees;
  - (vii) the provision of any transportation or communication facilities required for the conduct of petroleum operations;
  - (viii) the provision of office equipment and furniture;
  - (ix) the preparation of sites for production, including engineering and design studies, delineation work and feasibility studies done to determine the best means of operation;
  - (x) the sums payable by way of reimbursement of costs and premium on the costs to a party for the conduct of sole risk operations pursuant to the terms of a petroleum agreement;
- (c) expenditure incurred prior to the year of commencement in or on
- (i) general administration and management directly connected with petroleum operations;
  - (ii) subject to the limitation set forth in section 3 (1) (c), and interest paid in respect of a loan for the time being utilised to finance petroleum operations;
  - (iii) the education and training of citizens of Ghana at approved educational or technical institutions and including attachment with a contractor in an aspect of petroleum operations, and the provision of educational and scientific materials and equipment pursuant to the terms of a petroleum agreement;
  - (iv) rentals; and
  - (v) any other expenditure which if incurred in or after the year of commencement would be deductible under section 3;
- (d) where applicable, expenditures incurred by a contractor on behalf of the Corporation in respect of a carried interest within the meaning and pursuant to the terms of a petroleum agreement to the extent that the same have not been included within any other category of expenditure referred to in this definition of petroleum capital expenditure;

**“petroleum information”** means geological, geophysical and technical information, which is information that relates to the presence, absence or extent of deposits of petroleum in an area, or is likely to be of assistance in determining the presence, absence or extent of those deposits;

**“petroleum operations”** includes exploration, development or production operations and operations for the sale, or export without sale of petroleum, which are operations carried out by a contractor;

**“quarterly period”** means the period from 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October, to 31st December;

“**rentals**” means sums payable as rental charges in respect of the surface area to which a petroleum agreement relates and which, in accordance with section 18 of the Petroleum (Exploration and Production) Act, 1984<sup>8</sup> have been prescribed or are otherwise provided for under the terms of a petroleum agreement;

“**Republic**” includes the territory of the Republic of Ghana and the seabed, subsoil, the continental shelf and any other areas within the jurisdiction of the Republic;

“**resident in the Republic**” has the same meaning as the Internal Revenue Act, 2000 (Act 592);

“**Revenue Commissioner**” has the same meaning as in the Revenue Commissioners Law, 1985 (P.N.D.C.L. 80);

“**royalties**” means royalties payable to the Republic by a contractor out of, or calculated by reference to petroleum to which the contractor is entitled under the terms and conditions of a petroleum agreement;

“**special carried interest allowance**” means the gross income derived from the sale or export without sale of petroleum transferred to a contractor from what would otherwise be the entitlement of the Corporation where a petroleum agreement has provided for the advance of sums of money to the Corporation by a contractor in respect of the Corporation’s participating interest and for the reimbursement of the advances from the Corporation’s entitlement to production;

“**subcontractor**” means a person who enters into a contract with a contractor for the provision of work or services including rental of plant and equipment, in the Republic for or in connection with the petroleum agreement to which the contractor is a party and where a petroleum agreement so provides includes a “**non-resident person**” or “**non-resident company**” as those terms are defined in the Internal Revenue Act, 2000 (Act 592) who under the terms of a contract provide that work or service;

“**year of assessment**” has the same meaning as in the Internal Revenue Act, 2000 (Act 592);

“**year of commencement**” means in relation to a petroleum agreement the year of assessment in which the contractor first produces petroleum under a programme of continuous production for sale.

### 39. Repeal and disapplication of other tax legislation

*Spent.*<sup>9</sup>

8. P.N.D.C.L. 84.

9. The section provided that:

- (1) The Petroleum Income Tax Law, 1986 (P.N.D.C.L. 185) is hereby repealed.
- (2) The provisions contained in the Third Schedule to the Income Tax Decree, 1975 (S.M.C.D. 5) shall not apply to petroleum operations.
- (3) There shall be no tax charged, or withholding of tax required, under the provisions of the Income Tax Decree, 1975 (S.M.C.D. 5) in respect of any income, or dividends paid out of any income which is taken into account in ascertaining chargeable income or loss under the provisions of this Law, or which is excluded from gross income hereunder.
- (4) Nothing in the Additional Profits Tax Law, 1985 (P.N.D.C.L. 122) or the Capital Gains Tax Decree, 1975 (N.R.C.D. 347) shall apply to petroleum operations hereunder.

*Continued on next page*

**40. Penalties and fines**

The payment of penalties and fines provided for in this Act shall be paid in the currency in which payments of tax are to be made under the terms of the applicable petroleum agreement.

**41. Exemption**

Subject to article 174 of the Constitution, the Minister may, by legislative instrument, exempt a contractor from the operation of a general law or a provision of the law relating to taxation other than this Act.

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**SCHEDULE**

[Section 3]

*Capital Allowances***1. Deductions in ascertaining chargeable income**

In ascertaining for a year of assessment the chargeable income of a person conducting petroleum operations there shall be deducted from the gross income of that person in the year of commencement and in subsequent years of assessment capital allowances calculated as provided in this Schedule.

**2. Capital allowance for the year of commencement**

(1) The capital allowance for the year of commencement shall be calculated by dividing the amount which is the sum of money of petroleum capital expenditure incurred by a person carrying on petroleum operations in the year of commencement and the petroleum capital expenditure incurred in previous years by five and the amount so calculated shall be deducted in the year of commencement and in each of the successive four years.

(2) The capital allowance for the year of commencement shall cease to exist where it has been deducted in five successive years including the year of commencement.

**3. Annual capital allowance**

(1) For a year of assessment after the year of commencement, an annual capital allowance shall be calculated by dividing the total petroleum capital expenditure incurred in that year by five and the amount so calculated shall be deducted in that year and in each of the successive four years.

(2) An annual capital allowance shall cease to exist where it has been deducted in five successive years including the year in respect of which it was first calculated.

**4. Calculations of annual deductions after year of commencement**

The capital allowance for a year of assessment after the year of commencement shall be the sum of

(a) the annual capital allowance for that year, and

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(5) Except as specifically provided in this Law or under legislative instruments made under section 41, the general laws of Ghana relating to tax administration, jurisdiction to impose tax and to try offences in respect of tax matters, shall continue to apply to the matters provided for in this Law."

## SCHEDULE—continued

- (b) the sum of the amounts required to be deducted in that year pursuant to
- (i) sub-paragraph (1) of paragraph 2 in respect of the capital allowance for the year of commencement for so long as that allowance subsists, and
  - (ii) sub-paragraph (1) of paragraph 3 in respect of subsisting annual capital allowances for previous years.

**5. Netting of expenditures for capital allowances**

For the purpose of calculating the capital allowance for the year of commencement pursuant to paragraph 4 (b) (i) petroleum capital expenditure incurred in the year of commencement and in previous years shall be the net expenditure after deducting,

- (a) as consideration in respect of the acquisition by any other person of an interest or proportionate part of the interest in a petroleum agreement and in the assets held in connection with the agreement in respect of which petroleum capital expenditure has been incurred;
- (b) in the case of the sale of an asset in respect of which petroleum capital expenditure has been incurred which is not a sale falling under paragraph (a) the proceeds of sale;
- (c) in the case of the loss or destruction of an asset, any insurance moneys, compensation of damages paid in respect of the asset;
- (d) any sums of money received by a person conducting petroleum operations as reimbursement of costs and premium on the costs in respect of sole risk operations conducted pursuant to the terms of a petroleum agreement; and
- (e) any other amount received in respect of, or in connection with, petroleum operations in or before the year of commencement.

**6. Sale of assets after year of commencement**

(1) If in a year after the year of commencement an asset in respect of which petroleum capital expenditure has been incurred, is sold by a person carrying on petroleum operations, or is lost, or destroyed, the proceeds of the sale, or in the case of an asset lost or destroyed any insurance moneys, compensation or damages received by that person shall be divided by five and the resulting amount shall in that year and in each of the successive four years be added to the gross income of that person from petroleum operations for the purpose of calculating the chargeable income of that person.

(2) The sums of money received after the year of commencement as reimbursement of cost and premium to a sole risk party under the sole risk terms of a joint operating agreement shall be treated as proceeds from the sale of an asset and shall be divided by five and the resulting amount shall in that year and in each of the successive four years be added to the gross income of that person from petroleum operations for the purpose of calculating the chargeable income of that person.

(3) This paragraph does not apply to the assignment of an interest in a petroleum agreement or a proportionate part of the interest or to any other asset assigned with the interest.

SCHEDULE—*continued***7. Assignment of interest after the year of commencement**

Where in a year of assessment after the year of commencement, a person conducting petroleum operations has assigned the interest of that person in a petroleum agreement or a proportionate part of the interest and that interest in assets held in connection with the operations or a proportionate part of the operations,

- (a) the capital allowances to which the assignor would otherwise have been entitled in respect of petroleum capital expenditure and incurred before the assignment will be reduced for that year and subsequent years for as long as the allowances subsist by a proportion corresponding to the proportion of the interest of the assignor in the petroleum agreement which has been so assigned;
- (b) the capital allowances to which the assignee would otherwise have been entitled in respect of petroleum capital expenditure incurred by the assignee in that year and subsequent years will be increased by an amount equal to the amount by which the capital allowances of the assignor for that year and a subsequent year has been reduced, pursuant to subparagraph (a).

**8. Exclusion of other chargeable capital**

Where a deduction is made under this Schedule in respect of a petroleum capital expenditure in computing the income of a person conducting petroleum operations in respect of a year of assessment, then to the extent to which the deduction has been made, a further deduction shall not be made under any other provision of this Act in respect of the same petroleum capital expenditure in ascertaining the chargeable income of the person in respect of the same or a previous or subsequent year of assessment.

**9. Apportionment**

A reference in this Schedule to the sale of an asset includes a reference to the sale of that asset, together with any other asset, whether or not petroleum capital expenditure has been incurred on the last-mentioned asset; and, where an asset is sold, together with another asset, so much of the value of the asset as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the price paid for that asset.

**10. Part of an asset**

A reference in this Schedule to an asset shall be construed where necessary as including a reference to a part of an asset, including an undivided part of that asset in the case of joint interest in the asset, and when so construed a necessary apportionment shall be made as may, in the opinion of the Commissioner, be just and reasonable.

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