



FEDERAL REPUBLIC OF NIGERIA

**THE PETROLEUM INDUSTRY
FISCAL BILL 2018 (SB. 472)**

*A Bill for an Act to Provide for the Fiscal Framework for the Petroleum Industry
in Nigeria and for other Related Matters.*



**A BILL FOR
AN ACT TO PROVIDE FOR THE FISCAL FRAMEWORK FOR THE
PETROLEUM INDUSTRY AND FOR OTHER RELATED MATTERS**

CONTENTS

Arrangement of Sections

**PART 1
OBJECTIVES AND ADMINISTRATION**

1. Objectives
2. Administration

**PART 2
PETROLEUM INCOME TAX**

Chapter 1 – Imposition of tax and ascertainment of chargeable profits

3. Application of this Part of the Act.
4. Charge of tax
5. Ascertainment of profits, adjusted profit, assessable profits and chargeable profits
6. Deductions allowable
7. Deductions not allowed
8. Exclusion of certain profits, etc.
9. Artificial transactions, etc.
10. Assessable profits and adjusted losses
11. Trade or business transferred under the Companies and Allied Matters Act
12. Chargeable profits and capital allowances

Chapter 2 – Ascertainment of assessable tax and of chargeable tax

13. Assessable tax
14. Chargeable tax

PETROLEUM INDUSTRY FISCAL BILL 2018

15. Additional chargeable tax payable in certain circumstances
16. Assessment of Additional Petroleum Income Tax

Chapter 3 – Persons chargeable

17. Partnerships, etc
18. Taxation of funding mechanisms and transaction services in petroleum operations
19. Company wound up, etc.
20. Avoidance by transfer
21. Indemnification of representative

Chapter 4 – Accounts and particulars

22. Preparation and delivery of accounts and particulars
22. Service may call for further information
24. Power to call for returns, books; etc
25. Returns of estimated tax
26. Extension of periods for making returns
27. Self-Assessment
28. Assessment of Tax Payable Power to call for returns, books; etc.
29. Additional assessments
30. Making of assessments, etc
31. Notices of assessment, etc
32. Errors and defects in assessment and notice
33. Income tax computation

Chapter 5 – Appeals

34. Appeals to Tax Appeal Tribunal
35. Appeals to Federal High Court against assessments
36. Assessment to be final and conclusive

Chapter 6 – Collection, recovery and repayment of tax

37. Procedure in cases where objection or appeal is pending
38. Time within which payment is to be made
39. Penalty for non-payment of tax and enforcement of payment
40. Collection of tax after determination of objection or appeal
41. Suit for tax by the Service
42. Relief in respect of error or mistake
43. Repayment of tax

Chapter 7 – Offences and penalties

PETROLEUM INDUSTRY FISCAL BILL 2018

44. Penalty for offences
45. Penalty for making incorrect accounts, etc
46. False statements and returns
47. Penalty for failure to withhold tax
48. Penalties for offences by authorized and unauthorized persons
49. Deduction of tax at source
50. Tax to be payable notwithstanding any proceedings for penalties
51. Prosecution to be with the sanction of the Service
52. Saving for criminal proceedings

Chapter 8 – Miscellaneous

53. Restrictions on effect of the Personal Income Tax Act and other Acts
54. Double taxation arrangements with other territories
55. Method of calculating relief to be allowed for double taxation
56. Power to amend the First Schedule

PART 3

DEEP OFFSHORE AND FRONTIER BASIN OPERATIONS

57. General Application of this Part
58. Determination of petroleum income tax
59. Production allowance
60. Payment of royalty
61. Chargeable tax on upstream petroleum operations
62. Service to issue receipts to each party

PART 4

MIDSTREAM PETROLEUM OPERATION

63. General Application of this Part
64. Application of Companies Income Tax Act to Midstream Petroleum Operations
65. Incentives to the Midstream Petroleum Operations

PART 5

DOWNSTREAM PETROLEUM OPERATION

67. General Application of this Part.
68. Application of Companies Income Tax Act to Downstream Petroleum Operations
69. Incentives

PART 6
GENERAL PROVISIONS

70. General Application of this Part
71. Rules and Forms
72. Royalty
73. Periodic Review
74. Adaptation of laws
75. Transitional Provisions
76. Repeal
77. Interpretation

FIRST SCHEDULE – Capital Allowances

SECOND SCHEDULE – Production Allowance

THIRD SCHEDULE – Petroleum Fees, Concession Rentals and Royalty



**A BILL FOR
AN ACT TO PROVIDE FOR THE FISCAL FRAMEWORK FOR THE
PETROLEUM INDUSTRY AND FOR OTHER RELATED MATTERS**

[Commencement:]

**PART 1
OBJECTIVES AND ADMINISTRATION**

1. Objectives

The objectives of this Act shall be to: -

- (a) establish a progressive fiscal framework that encourages substantial and progressive investment in the petroleum industry balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria;
- (b) institute a forward looking fiscal framework that is based on core principles of clarity, dynamism, neutrality, open access and fiscal rules of general applications;
- (c) provide clear distinction between legislative aspects of the fiscal regime and negotiable aspects of contractual obligation.
- (d) establish a fiscal framework that expands the revenue base for the government while ensuring a fair return for the investors;
- (e) simplify the administration of petroleum tax ;
- (f) promote equity and transparency in the fiscal system.

2. Administration

(1) The administration and collection of government revenue in the petroleum industry shall be the function of the Federal Inland Revenue Service and the Nigerian Petroleum Regulatory Commission as follows:

- (a) The Service shall be responsible for the assessment and collection of Petroleum Income Tax, and the enforcement of this Act in that regard;
- (b) The Service shall be responsible for the assessment and collection of

Companies Income Tax in accordance with this Act in respect of such taxable petroleum operations, and the enforcement of this Act in that regard; and

- (c) The Commission shall be responsible for the determination and collection of rents and royalties in accordance with this Act, and enforce this Act in that regard.

PART 2
PETROLEUM INCOME TAX

Chapter 1 – Imposition of tax and ascertainment of chargeable profits

3. Application of this Part of the Act.

Except as otherwise provided, the provisions of this Part, that is Part 2 b shall apply to upstream petroleum operations as defined in Section 77 of this Act.

4. Charge of tax

(1) There shall be levied upon the profits of any company engaged in upstream petroleum operations a tax to be known as Petroleum Income Tax which shall be charged, and assessed upon its profits and payable during each Accounting Period in accordance with the provisions of this Act.

(2) Where a company has operations spanning different terrains, the tax shall be charged and assessed separately on the operations in each terrain.

(3) Companies shall be entitled to consolidate operations within the same terrain except Production Sharing Contracts and Service Contract involving the National Asset Management Company.

(4) Notwithstanding anything to the contrary in this Act, the Commission may, for the purpose of incentivizing Frontier Basin exploration and development, subject to the approval of the Minister responsible for petroleum operations, direct or allow consolidation of costs and income from Frontier Basin operations with costs and income from operations in a different terrain.

(5) The consolidation granted pursuant to subsection 4 of this section shall be for a period of time stipulated by the Commission.

(6) Companies engaged in upstream gas operations shall be entitled to a tax-free period of five years commencing from the date of production provided that the provision of this subsection 6 shall not apply to a company to which subsections 2 and 3 of section 75 apply

5. Ascertainment of profits, adjusted profit, assessable profits and chargeable profits

(1) Subject to the provisions of this Act, in relation to any accounting period, the profits of that period of a company shall be taken to be the aggregate of–

- (a) the proceeds of sale of all chargeable oil, chargeable condensate and chargeable natural gas sold by the company in that period;
 - (b) the value of all chargeable oil, chargeable condensate and chargeable natural gas disposed of by the company in that period;
 - (c) Condensate spiked into crude oil shall be treated as an upstream petroleum operation and condensate not spiked into crude oil shall be taxed at downstream tax rate.
 - (d) all income of the company of that period incidental to and arising from any one or more of its petroleum operations excluding income from midstream and downstream activities.
- (2) For the purposes of subsection (1) (b) of this section, the value of any chargeable oil, chargeable condensate and chargeable natural gas so disposed of shall be taken to be the aggregate of–
- (a) the value of that chargeable oil, chargeable condensate or chargeable natural gas as determined at the measurement point for the purposes of royalty in accordance with the provisions of this Act and such other enactments applicable thereto.
 - (b) any cost of extraction of that oil or chargeable natural gas deducted in determining its value as referred to in paragraph (a) of this subsection; and
 - (c) any cost incurred by the company in transportation and storage of that oil and natural gas between the field of production and the custody transfer point.
- (3) The adjusted profits of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 6 of this Act and any adjustments to be made in accordance with the provisions of section 8 of this Act.
- (4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 12 of this Act.
- (5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 12 of this Act.

6. Deductions allowable

- (1) In computing the adjusted profit of any company of any accounting period from its petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred, whether within or outside Nigeria, during that period by such company for the purposes of those operations, including but without otherwise expanding or limiting the generality of the foregoing–
- (a) rents incurred by the company for that period in respect of land or

buildings occupied under a petroleum licence for disturbance of surface rights or for any other like disturbance;

- (b) all non-productive rents, the liability for which was incurred by the company during that period;
- (c) all royalties, the liability for which was incurred by the company during that period in respect of natural gas sold or delivered to any buyer or customer or disposed of in any other commercial manner;
- (d) all royalties the liability for which was incurred by the company during that period in respect of crude oil or of casing head petroleum spirit won in Nigeria;
- (e) all sums the liability for which was incurred by the company to the Federal Government of Nigeria during that period by way of customs or excise duty or other like charges levied in respect of machineries, equipment and goods used in the company's petroleum operation;
- (f) sums incurred by way of interest upon any money borrowed by such company including inter-company loans, where the interest was payable on capital employed in carrying on its petroleum operations:

Provided that where the rate of interest, fees or charges payable on such loans are excessive by reference to terms prevailing in the open market, that is the London Inter-Bank Offer Rate plus market determined rate, by companies that engage in crude oil production operations in the Nigerian oil industry, the deductions shall be limited to such commercial rate ;

- (g) any expenses incurred for repair of premises, plant, machinery, or fixtures employed for the purpose of carrying on petroleum operations or for the renewal, repair or alteration of any implement, utensils or articles so employed;
- (h) debts directly incurred to the company and proved to the satisfaction of the Service to have become bad or doubtful in the accounting period for which the adjusted profits is being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period:

Provided that–

- (i) 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 that accounting period, nor in respect of any particular debt shall it include any amount deducted under the provisions of this paragraph in determining the adjusted profit of a previous accounting period;
- (ii) all sums recovered by the company during that accounting period on account of amounts previously deducted in respect of bad or

doubtful debts shall, for the purposes of subsection (1) (c) of section 5 of this Act, be treated as income of that company of that period; and

- (iii) it is proved to the satisfaction of the Service that the debts in respect of which a deduction is claimed were either—
 - (a) included as a profit from the carrying on of petroleum operations in the accounting period in which they were incurred; or
 - (b) advances made in the normal course of carrying on petroleum operations not being advances on account of any item falling within the provisions of section 7 of this Act;
- (i) any other expenditure, including tangible drilling costs directly incurred in connection with the drilling, of a development well, but excluding an expenditure which is qualifying expenditure for the purpose of the First Schedule to this Act, and any expense or deduction in respect of a liability incurred which is deductible under any other provision of this section -
 - (i) any expenditure (tangible or intangible) directly incurred in connection with the drilling of the first exploration well and the next two appraisal wells in the same field whether the wells are productive or not;
 - (ii) where a deduction may be given under this section in respect of any such expenditure that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the First Schedule;[First Schedule]
- (j) any contribution to a pension, provident or other society, scheme or fund which may be approved, with or without retrospective effect, by the National Pension Commission subject to such general conditions or particular conditions in the case of any such society, scheme or fund as the Service may prescribe:

Provided that any sum received by or the value of any benefit obtained by such company, from any approved pension, provident or other society, scheme or fund, in any accounting period of that company shall, for the purposes of subsection (1) (d) of section 5 of this Act, be treated as income of that company of that accounting period;
- (k) all sums, the liability of which was incurred by the company during that period to the Federal Government, or to any State or Local Government Council in Nigeria by way of duty, customs and excise duties, stamp duties, education tax, tax (other than the tax imposed by this Act) or any other rate, fee or other like charges;

- (l) such other deductions as may be prescribed by any rule made under this Act.
- (m) any amount contributed to any fund, scheme or arrangement approved by the Commission for the purpose of providing for abandonment and decommissioning of petroleum installations.

Provided that the surplus or residue of such fund will be subject to tax under this Act.

- (n) any amount contributed to a host community development trust pursuant to the provisions of the Petroleum Host Community Development Trust Act.
- (2) Where a deduction has been allowed to a company under this section in respect of any liability of the company and such liability or any part thereof is waived or released the amount of the deduction or the part thereof corresponding to such part of the liability shall, for the purposes of subsection (1) (c) of section 5 of this Act, be treated as income of the company of its accounting period in which such waiver or release was made or given.

7. Deductions not allowed

- (1) Subject to the express provisions of this Act, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its petroleum operations, no deduction shall be allowed in respect of—
- (a) any disbursements or expenses not being money wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred, for the purpose of those operations;
 - (b) any capital withdrawn or any sum employed or intended to be employed as capital;
 - (c) any capital employed in improvements as distinct from repairs;
 - (d) any sum recoverable under an insurance or contract of indemnity save any amount that is not recovered under such scheme;
 - (e) rent of or cost of repairs to any premises or part of premises not incurred for the purposes of those operations;
 - (f) any amounts incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere save as provided for in this Act;
 - (g) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;

- (h) any payment to any provident, savings widows' and orphans' or other society, scheme or fund, except such payments as are allowed under subsection (i) and (j) of section 6 of this Act;
- (i) any customs duty on goods (including articles or any other thing) imported by the company
 - (i) for resale or for personal consumption of employees of the company; or
 - (ii) where goods of the same quality to those so imported are produced in Nigeria and are available, at the time the imported goods were ordered by the company for sale to the public at the prices less or equivalent to the cost to the company of the imported goods;
- (j) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits.
- (k) any expenditure incurred as a penalty.
- (l) twenty percent of any expense, incurred outside Nigeria, except where such expenditure relates to the procurement of goods or services which are not available domestically in the required quantity and quality.

8. Exclusion of certain profits, etc.

- (1) Where a company engaged in upstream petroleum operations is engaged in the transportation of chargeable oil by ocean going oil-tankers operated by or on behalf of the company from Nigeria to another territory, then such adjustments shall be made in computing an adjusted profit or a loss as shall have the effect of excluding therefrom any profit or loss attributable to such transportation.
- (2) Midstream activities and downstream activities incomes shall be excluded from the provision of this Part and shall be taxable under the Companies Income Tax Act.

9. Artificial transactions, etc.

- (1) Where the Service is of the opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Service may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as the Service considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessable accordingly. In this subsection, the expression "**disposition**" includes any trust, grant, covenant, agreement or arrangement.
- (2) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious, namely, transactions between persons one of whom

has control over the other or between persons both of whom are controlled by some other person which, in the opinion of the Service, have not been made on the terms which might fairly have been expected to have been made by independent person engaged in the same or similar activities dealing with one another at arm's length.

- (3) Nothing in this section shall prevent the decision of the Service in the exercise of any discretion given to the Service by this section from being questioned in an appeal against an assessment in accordance with Chapter 5 of this Act and on the hearing of any such appeal the appropriate Tax Appeal Tribunal or the Court may confirm or vary any such decision including any directions made under this section.
- (4) This section shall be administered in line with transfer pricing regulations as applicable.

10. Assessable profits and adjusted losses

- (1) Subject to the provisions of this section, the assessable profits of any company for any accounting period shall be the amount of the adjusted profit of that period after the deduction of—
 - (a) the amount of any loss incurred by that company during any previous accounting period;
 - (b) in a case to which section 11 of this Act applies, the amount of any loss which under that section is deemed to be a loss incurred by that company in its trade or business during its first accounting period; and
 - (c) the amount of any operating cost incurred by the company prior to the first accounting period of the company.
- (2) A deduction under subsection (1) of this section shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss was incurred, and, so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on.
- (3) Within five months after the end of any accounting period of a company, or within such further time as the Service may permit in writing in any instance, the company may elect in writing that a deduction or any part thereof to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect from time to time in any succeeding accounting period.

11. Trade or business transferred under the Companies and Allied Matters Act

- (1) Where in pursuance of the provisions of Part X of the Companies and Allied Matters Act, a company (in this subsection referred to as "the Reconstituted Company") is incorporated under that Act to carry on any trade or business of petroleum operations previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the reconstituted company, then, that the trade or business carried on by the Reconstituted Company immediately after the incorporation of that company under that Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the other company, the provisions set out in subsection (2) of this section shall have effect, notwithstanding anything in this Act to the contrary.[Cap. C20.]
- (2) The following provisions shall have effect in a case to which subsection (1) of this section applies, namely—
 - (a) if as respects the trade or business previously carried on in Nigeria by any other Nigerian company; the first sale of or bulk disposal of chargeable oil by or on behalf of the foreign company has occurred on or before the date on which the Reconstituted Company is incorporated
 - (i) the first accounting period of the Reconstituted Company shall be such date within the calendar month in which the company is incorporated and ending 31 December of the same year;
 - (ii) for every other year, the accounting period shall be 1 January of that year to 31 December of the same year; and
 - (iii) for the cessation year, the accounting period shall be 1 January of that year to such last date the company ceases to be in business and its certificate is returned to the Corporate Affairs Commission or any such Agency as the case may be.

"accounting period" in this section shall have the same meaning as provided for in section 77 of this Act.

- (b) for the purposes of the First Schedule to this Act, the assets so vested in the Reconstituted Company shall be deemed to have been sold to it, on the day of its incorporation, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the other Nigerian company. [First Schedule.]
- (c) the Reconstituted Company shall not be entitled to any initial allowances as respects those assets, and shall be deemed to have received all allowances given to the other company in respect of those assets under the First Schedule and any allowances deemed to have been received by the other company under the provisions of this paragraph of this Act; and
- (d) the amount of any loss incurred during any accounting period by the other company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable

profits of any accounting period of that Nigerian company, shall be deemed to be a loss incurred by the Reconstituted Company in its trade or business during its first accounting period; and the amount of that loss shall in accordance with the provisions of section 10 of this Act, be deducted from the adjusted profits of the Reconstituted Company.

12. Chargeable profits and allowances

- (1) The chargeable profits of any company for any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section.
- (2) There shall be computed the aggregate amount of all allowances due to the company under the provisions of the First Schedule and Second Schedule to this Act for the accounting period. [First Schedule] [Second Schedule]
- (3) The amount to be allowed as a deduction under subsection (1) in respect of the said allowances shall be—
 - (a) the aggregate amount computed under subsection (2) of this section; or
 - (b) a sum not more than 80 % of the assessable profits of the accounting period whichever is less.
- (4) Where the total amount of the allowances computed under subsection (2) of this section cannot be deducted under subsection (1) of this section owing to insufficiency of or no assessable profits of the accounting period, such total amount or the part thereof which has not been so deducted as the case may be, shall be added to the aggregate amount to be computed under subsection (2) for the following accounting period of the company, and thereafter shall be deemed to be an allowance due to the company, under the provisions of the First and Second Schedule to this Act for that following accounting period.

Chapter 2 – Ascertainment of assessable tax and of chargeable tax

13. Assessable tax

- (1) The assessable tax for any accounting period of a company shall be a percentage of the chargeable profit for that period aggregated separately as follows:
 - (a) 65% for onshore areas crude oil profit
 - (b) 50% for shallow water areas crude oil profit
 - (c) 30% for onshore areas natural gas profit
 - (d) 30% for shallow water areas natural gas profit
- (2) Incidental income to each operations shall attract the rate in its area of operation

14. Chargeable Tax

- (1) The Chargeable Tax for any accounting period of a company shall be an amount equal to the assessable tax less all estimated profits tax payable in respect of the same year.

- (2) Except as provided in section 75, income and expenses relating to gas shall be separate from those relating to crude oil.

15. Additional chargeable tax payable in certain circumstances

- (1) If, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Act other than this section, is less than the amount mentioned in subsection (2) of this section, the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts.
- (2) The amount referred to in the foregoing subsection is, for any accounting period of a company, the amount which the chargeable tax for that period, calculated in accordance with the provisions of this Act, would come to if, in the case of crude oil exported from Nigeria by the company, the reference in section 5 (1) (a) of this Act to the proceeds of sale thereof were a reference to the amount obtained by multiplying the number of barrel of that crude oil by the realizable price per barrel.
- (3) For the purposes of subsection (2) of this section the relevant sum per barrel of crude oil exported by a company is the official selling price applicable to that crude oil as may from time to time be advised by the Commission after determination under subsection 5 of this section.
- (4) The whole of any additional chargeable tax payable by a company by virtue of this section for any accounting period shall be payable concurrently with the final installment of the chargeable tax payable for that period apart from this section, and shall be assessed and be paid by the company accordingly under the provisions of this Act.
- (5) In this section, "**official selling price**", in relation to any crude oil, condensate or natural gas shall be as defined under section 77 of this Act.
- (6) Every realizable price per barrel established as aforesaid must bear a fair and reasonable relationship—
- (a) to the established official selling prices of Nigerian crude oils of comparable quality and specific gravity, if any; or
- (b) if there are no such established official selling prices for such Nigerian crude oils; to the official selling prices at main international trading centers for crude oil of comparable quality and gravity, due regard being had in either case to freight differentials and all other relevant factors.
- (7) References in this section to crude oil include condensate spiked into crude stream.
- (8) Where any crude oil which in relation to a particular company is chargeable oil, is exported from Nigeria otherwise than by that company, that crude oil

shall for the purposes of this section be deemed to be exported from Nigeria by that company.

16. Assessment of additional petroleum income tax

- (1) The company shall pay additional petroleum income tax in accordance with the provisions of this section where:
 - (a) the average official selling price for crude oil in a particular accounting period exceeds US\$60 per barrel, or
 - (b) The average official selling price for gas in a particular accounting period exceeds US\$6 per mmbtu of gas

The charges in this subsection 1 shall be in addition to the chargeable tax in Section 14 of this Act,

- (2) The additional petroleum income tax rate shall be assessed at the rate of 0.5% for every additional US\$1 price increase, subject to a maximum as stated in subsections 4 and 5 of this section
- (3) The Additional Petroleum Income Tax shall be calculated by applying the rate as determined in subsection 2 above on the chargeable profit less the Petroleum Income Tax as calculated under section 14 of this Act
- (4) For oil and condensate production, the maximum additional tax rate shall be 60%.
- (5) For gas production, the maximum additional tax rate shall be 5%
- (6) The Additional Petroleum Income Tax shall apply to all upstream petroleum operations.

Chapter 3 – Persons chargeable

17. Partnerships, etc.

- (1) Any person (other than a company) who engages in petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from those operations shall be guilty of an offence.
- (2) Where the person referred to in subsection (1) has benefitted from any profits on upstream crude oil operations, such person shall be subject to petroleum income tax under this Act on such profits and shall pay a penalty as provided under Section 46 of this Act.
- (3) Where two or more companies are engaged in petroleum operations either in partnership, in a joint adventure or in concert under any scheme or arrangement, tax shall be charged and assessed in accordance with subsection (4) of this section.

- (4) The apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company shall be in line with the interest of the parties under a jointly executed agreement that will be made available to the Service. Where no jointly executed agreement is made available, the Commission shall advise the Service the approved interest of the parties and shall be binding on the parties.
- (5) Subject to the provisions of this Act, where two or more companies are engaged in upstream petroleum operation either in partnership, in a joint venture or in concert under any scheme or arrangement, the Service may make regulation pursuant to Section 61 of the Federal Inland Revenue Establishment Act, in compliance with the procedures set out in Section 8 of the Petroleum Industry Governance Act, for the ascertainment of tax to be charged or assessed upon each company engaged.
- (6) Such regulation may make provisions consistent with respect to apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and tax chargeable upon each company, or may provide for the computation of any tax as if the partnership, joint adventure, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned or may accept some other basis of ascertaining the tax chargeable upon each of the companies and such regulations may contain provisions which have regard to any circumstances whereby such operations are partly carried on for any company by an operating company whose expenses are reimbursed by those companies.
- (7) Regulations made under this section may be of general application for the purpose of this section and this Part, or for a class of arrangement, or for a particular application to a specific partnership, joint venture, scheme or arrangement.
- (8) A regulation made under this section may be amended or replaced from time to time.
- (9) The effect of any regulation made under this section shall not impose a greater burden of tax upon any company so engaged in any partnership, joint venture, scheme or arrangement than would have been imposed upon that company under this Part if all things enjoyed, done or suffered by such partnership, joint venture, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint venture, scheme or arrangement.

18. Taxation of funding mechanisms and transaction services in petroleum operations.

In the taxation of any partnership, joint venture, or scheme or arrangement in upstream operation, a company that provides financing and technical service not being under a farm –in and farm-out arrangement and with an understanding to be paid in cash for such services provided under the arrangement shall be taxable under the Companies income Tax Act, LFN21, 2004 or any successor Act.

19. Company wound up, etc.

- (1) Where a company is being wound up or where in respect of a company a receiver has been appointed by any Court, by the holders of any debentures issued by the company or otherwise, the company may be assessed and charged to tax in the name of the liquidator of the company, the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver.
- (2) Any such liquidator, receiver or agent shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.
- (3) Such liquidator or receiver shall not distribute any assets of the company to the shareholders or debenture holders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company or by such liquidator, receiver or agent on behalf of the company.

20. Avoidance by transfer

Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Service one reason for such transfer by the company was to avoid payment of such tax then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 41 of this Act subject to any necessary modification of that section.

21. Indemnification of representative

Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money in or coming to his hands or within his de facto control on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in accordance with the provisions of this Act.

Chapter 4 – Accounts and particulars

22. Preparation and delivery of accounts and particulars

- (1) Every company which is or has been engaged in petroleum operations shall for each accounting period of the company, make up accounts of its profits or loses, arising from each terrain that period and shall prepare the following particulars–
 - (a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;
 - (b) in connection with the First Schedule to this Act, a schedule showing–
[First Schedule.]

- (i) the residues at the end of that period in respect of its assets;
 - (ii) all qualifying petroleum expenditure incurred by it in that period;
 - (iii) the values of any of its assets (estimated by references to the provisions of that Schedule) disposed of in that period; and
 - (iv) the allowances due to it under that Schedule for that period;
- (c) in connection with the Second Schedule to this Act, showing total production allowance from all its upstream petroleum operations [Second Schedule.]
- (d) a computation of its estimated chargeable profits of that period;
- (e) a statement of other sums, deductible under section 14 of this Act, the liabilities for which were incurred during that period;
- (f) a statement of all amounts repaid, refunded, waived or released to it, as referred to in subsection (4) of section 12 of this Act, during that period; and
- (g) a computation of its estimated tax for that period.
- (2) Every company which is or has been engaged in petroleum operations shall, with respect to any accounting period of the company, within five months after the expiration of that period or within five months after the date of publication of this Act in the Federal Gazette upon enactment (whichever is later) deliver to the Service a copy of its accounts (bearing an auditor's certificate) of that period, made up in accordance with the provisions of subsection (1) of this section, and copies of the particulars referred to in that subsection relating to that period; and such copy of those accounts and each copy of those particulars (not being estimates) shall contain a declaration, which shall be signed by a duly authorised officer of the company or by its liquidator, receiver or the agent of such liquidator or receiver, that the same is true and complete and where such copies are estimates each copy shall contain a declaration, similarly signed, that such estimate was made to the best of the ability of the person signing the same.

23. Service may call for further information

The Service may give notice in writing to any company which is or has been engaged in petroleum operations when and as often as to the Service may seem necessary requiring it to furnish within such reasonable time as may be specified by such notice fuller or further information as to any of the matters either referred to in section 22 of this Act or as to any other matters which the Service may consider necessary for the purposes of this Act.

24. Power to call for returns, books; etc.

- (1) For the purpose of obtaining full information in respect of any company's petroleum operations the Service may give notice to such company requiring

it within the time limited by such notice, which time shall not be less than 21 days from the date of service of such notice, to complete and deliver to the Service any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Service or its authorised representative on such date or dates as may be specified in such notice and to produce for examination any books, documents, accounts and particulars which the Service may deem necessary.

- (2) If a company assessable to tax under the provisions of this Act fails or refuses to keep books or accounts which, in the opinion of the Service are adequate for the purpose of ascertaining the tax, the Service may by notice in writing require it to keep such records, books and accounts as the Service considers to be adequate in such form and in such language as the Service may in the said notice direct and, subject to the provisions of subsections (3) and (4) of this section, the company shall keep records, books and accounts as directed.
- (3) An appeal shall lie from any direction of the Service made under this section to the Federal High Court.
- (4) On hearing such appeal the court may confirm or modify such direction and any such decision shall be final.

25. Returns of estimated tax

- (1) Not later than two months after the commencement of each accounting period of any company engaged in petroleum operations, the company shall submit to the Service a return, the form of which the Service may prescribe, of its estimated tax for such accounting period.
- (2) If, at any time during any such accounting period the company having made a return as provided for in subsection (1) of this subsection is aware that the estimate in such return requires revision then it shall submit a further return containing its revised estimated tax for such period.

25. Extension of periods for making returns

Where it is shown by any company to the satisfaction of the Service that for some good reason the company is not able to comply with the provisions of section 22 of this Act within the time limited by that section or any notice given to it under section 23 or 24 of this Act, within the time limited by any such notice, the Service may grant in writing such extension of that time as the Service may consider necessary.

27. Self-Assessment

- (1) Every company carrying on petroleum operations, including a company granted exemption from incorporation shall, whether or not a company is liable to pay tax under this Act for a year of assessment, with or without notice from the Service, file a self-assessment return with the Service in the prescribed form at least once a year and such return shall contain
 - (a) the audited accounts, tax and capital allowances computation for the year of assessment and a true and correct statement in writing

- containing the amount of profits computed under section 5 of this Act;
- (b) a duly completed self-assessment form as may be prescribed by the Service, from time to time, attested to by a director or secretary of the company and such attestation shall contain a declaration that it contains a true and correct statement of the amount of its profits computed in respect of all sources in accordance with this Act and any rule made and that the particulars given in such return are true and complete; and
 - (c) evidence of payment of the whole or part of the balance of the tax due into a bank designated for the collection of the tax. The balance of the tax due in this section is the amount payable having accounted for all the estimated tax payable and paid for the year of assessment.
- (2) Subject to this Act or any regulation made, the time of filing returns shall be-
- (a) in the case of a company that has been in business for more than eighteen months, not more than five months after the end of its accounting year; and
 - (b) in the case of a newly incorporated company, within eighteen months from the date of its incorporation or not later than five months after the end of its first accounting period, whichever is earlier; in addition, the form of returns shall be signed by a director who must be the chairman or the managing director of the company and the secretary respectively.
- (3) Any company which fails to comply with the provisions of subsection (2) without any reasonable explanation to the Service shall be liable to pay as penalty for late filing of N50,000 daily in which the failure occurs.
- (4) Notwithstanding anything to the contrary in any law, an income tax assessment shall be made in the currency in which the transaction took place.
- (5) Where an offence under this section by a company is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of the company (or the person purporting to act in any such capacity) he as well as the company shall be deemed to have committed the offence and shall on conviction be liable to a fine not exceeding N100,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (6) For the purposes of this section-

- (a) every company shall designate a representative who shall answer every query relating to the tax matters of the company; and
- (b) a person designated by a company pursuant to paragraph (a) of " this subsection shall be a person knowledgeable in the field of taxation.

28. Assessment of Tax Payable

- (1) The Service shall proceed to assess a company with the tax for any accounting period of the company as soon as may be after the expiration of the time allowed to such company for the of delivery of self-assessment provided for in section 27 of this Act.
- (2) Where a company has delivered a self-assessment for any accounting period of the company, the Service may–
 - (a) accept the same as assessment accordingly; or
 - (b) refuse to accept the same and proceed as provided in subsection (3) of this section upon any failure as therein mentioned and the like consequences shall ensue.
- (3) Where, for any accounting period of a company, the company files a self-assessment which was rejected by the Service or has failed to file self-assessment provided for in section 27 of this Act within the time limited by that section or has failed to comply with any notice given to it under the provisions of section 23 or 24 of this Act within the time specified in such notice or within any extended time provided for in section 26 of this Act and the Service is of the opinion that such company is liable to pay tax, the Service may estimate the amount of the tax to be paid by such company for that accounting period and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver such accounts and particulars or to comply with such notices; and nothing in this subsection shall affect the right of the Service to make any additional assessment under the provisions of section 29 of this Act.

29. Additional assessments

- (1) If the Service discovers or is of the opinion at any time that, with respect to any company liable to tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at a less amount than that which ought to have been charged and assessed for any accounting period of the company, the Service may within six years after the expiration of that accounting period and as often as may be necessary, assess such company with tax for that accounting period at such amount or additional amount as in the opinion of the Service ought to have been charged and assessed, and may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.

- (2) Where a revision under subsection (1) of this section results in a greater amount of tax to be charged than has been charged or would otherwise be charged an additional assessment or an assessment for any such subsequent accounting period shall be made accordingly, and the provisions of this Act as to notice of assessment objection, appeal and other proceedings under this Act shall apply to any such assessment or additional assessment and to the tax charged thereunder.
- (3) For the purpose of computing under subsection (1) of this section the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all relevant facts consistent with subsection (3) of section 36 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the company for that accounting period was being made or could have been made.
- (4) Notwithstanding the other provisions of this section, where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act, the Service may, at any time and as often as may be necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to the fraud, wilful default or neglect.

30. Making of assessments, etc.

- (1) Assessments of tax shall be made in such form and in such manner as the Service shall authorise and shall contain the names and addresses of the companies assessed to tax or of the persons in whose names any companies (with the names of such companies) have been assessed to tax, and in the case of each company for each of its accounting periods, the particular accounting period and the amount of the chargeable profits of and assessable tax and chargeable tax for that period.
- (2) When any assessment requires to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) of this section but showing the amended, or revised amount of the chargeable profits, assessable tax and chargeable tax.
- (3) A copy of each assessment and of each amended or revised assessment shall be filed in a list which shall constitute the Assessment List for the purpose of this Act.

31 Notices of assessment, etc

- (1) The Service shall cause to be served personally on or sent by registered post to a company who is liable to tax under this Act, by way of an additional assessment or an assessment by the Service, a notice of assessment stating its accounting period and the amount of its chargeable profits, assessable tax and chargeable tax charged and assessed upon the company, the place at which payment of the tax should be made, and informing such company of its rights

under subsection (2) of this section.

- (2) If any person in whose name an assessment was made in accordance with the provisions of this Act disputes the assessment, that person may apply to the Service, by notice of objection in writing, to review and revise the assessment so made on him; and such application shall be made within 21 days from the date of service of the notice of such assessment and shall state the amount of chargeable profits of the company of the accounting period in respect of which the assessment is made and the amount of the assessable tax and the tax which such person claims should be stated on the notice of assessment
- (3) The Service, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of 21 days, shall extend the period as may be reasonable in the circumstances.
- (4) After receipt of a notice of objection referred to in subsection (2) of this section the Service may within such time and at such place as the Service shall specify, require the person giving the notice of objection to furnish such particulars as the Service may deem necessary, and may by notice within such time and at such place as the Service shall specify, require any person to give evidence orally or in writing respecting any matters necessary for the ascertainment of the tax payable, and the Service may require such evidence if given orally to be given on oath or if given in writing to be given by affidavit.
- (5) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Service as to the amount of tax liable to be assessed, the assessment shall be amended accordingly and notice of the tax payable shall be served upon such person.
- (6) If an applicant for revision under the provisions of subsection (2) of this section fails to agree with the Service the amount of the tax, the Service shall give such applicant notice of refusal to amend the assessment as desired by such applicant, and may revise the assessment to such amount as the Service may determine and give such applicant notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this subsection.

32. Errors and defects in assessment and notice

- (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any Act amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

- (2) An assessment shall not be impeached or affected—
- (a) by reason of a mistake therein as to –
- (i) the name or a company liable or of a person in whose name a company is assessed; or
- (ii) the amount of the tax;
- (b) by reason of any variance between the assessment and the notice thereof, if in cases of assessment, the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made.

33. Income tax computation

- (1) Notwithstanding anything to the contrary in any law, all income tax computation made under sections 20 and 23 of this Act shall be made in the currency in which the transaction was effected.
- (2) Accordingly and notwithstanding anything to the contrary in any law, any assessment made under section 28 (1) of this Act shall also be made in the currency in which the computation giving rise to the assessment was made.

Chapter 5 – Appeals.

34. Appeals to Tax Appeal Tribunal

- (1) Any Company being aggrieved by an assessment made upon it, who has failed to agree with the Service as referred to in section 31 (6) of this Act, may appeal against the assessment to the appropriate Tax Appeal Tribunal upon giving notice in writing to the Service and to the secretary to such Tax Appeal Tribunal within thirty days after the date of service upon him of notice of the refusal of the Service to amend the assessment as desired:

Provided that notwithstanding the lapse of such period of thirty days, such person may appeal against the said assessment if he gives such Tax Appeal Tribunal the particulars mentioned in paragraphs (a) to (c) inclusive of subsection (2) of this section and if he shows to their satisfaction that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the Tax Appeal Tribunal being so satisfied, such person shall give such notice in writing to the Service and to such secretary within seven days thereof.

- (2) A notice of an appeal against an assessment, to be given under subsection(1) of this section, shall specify the following particulars—

- (a) the official number of the assessment and the accounting period for which it was made;
 - (b) the amount of the tax charged by the assessment;
 - (c) the date upon which the appellant was served with notice of refusal of the Service to amend the assessment as desired;
 - (d) the precise grounds of his appeal against the assessment; and
 - (e) an address for service of any notices, precepts or other documents to be given, by the secretary to the appropriate Tax Appeal Tribunal, to the Provided that at any time the appellant may give notice to such secretary and to the Service, by delivering the same or by registered post, of a change of such address but any such notice shall not be valid until delivered or received.
- (3) For the purposes of this section, the appropriate Tax Appeal Tribunal and their secretary to whom an appellant may give notice of appeal against an assessment under subsection (1) of this section shall be the Tax Appeal Tribunal, if any, established, under the provisions of section 53 (1) of the Companies Income Tax Act, for the area in which is situated the office of the Federal Inland Revenue Service from which the notice of that assessment was issued.
- (4) For the purposes of this Act, the provisions Fifth Schedule of the Federal Inland Revenue Service (Establishment) Act shall apply.
- (5) All appeals shall be heard in camera.
- (6) The Minister may make rules prescribing the procedure to be followed with respect to precepts and other like documents to be issued on behalf of Tax Appeal Tribunal, for the examination of witnesses and in the conduct of appeals before them.

35. Appeals to Federal High Court against assessments

- (1) Any person (being a company or a person in whose name a company is assessed) who, having appealed against an assessment made upon him to the appropriate Tax Appeal Tribunal under the provisions of section 34 of this Act, is aggrieved by the decision of such Tribunal may appeal against the assessment and such decision to the Federal High Court within thirty days after the date upon which such decision was given.
- (2) Notwithstanding the lapse of such period of thirty days such person may appeal against the said assessment and decision if it shows to the satisfaction of the judge that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and

upon the judge being so satisfied such person shall give such notice in writing to the Service within seven days thereof.

- (3) Where Tax Appeal Tribunal has been appointed with jurisdiction to hear an appeal, against an assessment made upon any person, under the provisions referred to in subsection (3) of section 34 of this Act, such person being aggrieved by the assessment and having failed to agree with the Service as referred to in subsection (6) of section 31, may appeal against the assessment to the Federal High Court and the provisions of subsection (2) of this section, so far as they are applicable, shall apply.
- (4) If the Service is dissatisfied with a decision of any Tax Appeal Tribunal, it may appeal against the decision to the Federal High Court.
- (5) Every company appealing shall appoint an authorised representative who shall attend before the court in person on the day and at the time fixed for the hearing of its appeal, but if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness, or other reasonable cause any duly appointed representative is prevented from attending in person at the hearing of the company's appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for such reasonable time as he thinks necessary for the attendance of the appellant's representative, or he may admit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement.
- (6) Twenty-one clear days notice shall, unless rules made hereunder otherwise provide, be given to the Service of the date fixed for the hearing of the appeal.
- (7) The onus of proving that the assessment complained of is excessive shall be on the appellant.
- (8) The judge may confirm, reduce, increase or annul the assessment or make such order thereon as to him may seem fit.
- (9) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by a duly authorised representative of the Service either personally on, or by registered post to, the appellant.
- (10) Notwithstanding anything contained in section 40 of this Act, if in any particular case, the judge from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, he may on application being made by or on behalf of the Service require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.
- (11) All appeals shall be heard in camera, unless the judge shall, on the application of the appellant, otherwise direct.

- (12) The costs of the appeal shall be at the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.
- (13) (a)The Chief Judge of the Federal High Court may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of such appeals and the procedure to be followed by a judge upon stating a case for the opinion or the Court of Appeal.
- (14) An appeal against the decision of the judge shall lie to the Court of Appeal-
 - (a) at the instance of the appellant where the decision of the judge is to the effect that the correct assessment of tax is in the sum of N10,000,000 or upwards; and
 - (b) at the instance of the Service where the decision of the judge is in respect of a matter in which the Service claimed that the correct assessment of tax was in the sum of N10,000,000 or upwards.

36. Assessment to be final and conclusive

- (1) Where no valid objection or appeal has been lodged within the time limited section 31, 34 or 35 of this Act, as the case may be, against an assessment as regards the amount of the tax assessed thereby, or where the amount of the tax has been agreed to under subsection (5) of section 31 of this Act, or where the amount of the tax has been, determined on objection or revision under subsection (6) of section 31 of this Act, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such tax, and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax., and to any penalty under section 35 of this Act, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under any claim, made under any provisions of this Act, which has been agreed to by the Service or determined on any appeal against a refusal to admit any such claim.
- (2) Where an assessment has become final and conclusive, any tax overpaid shall be repaid or treated as credit in favour of the assessed party.
- (3) Nothing in section 31 of this Act or in this Part shall prevent the Service from making any assessment or additional assessment to tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period, under subsection (5) or (6) of section 31 of this Act by agreement or otherwise or on appeal.

Chapter 6 – Collection, recovery and repayment of tax

37. Procedure in cases where objection or appeal is pending

Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance, pending proceedings for any instalment thereof being stayed until such objection or appeal is determined but the Service may in any such case enforce payment of that portion of the tax (if any) which is not in dispute by an application to the Tribunal or Court as the case may be.

38. Time within which payment is to be made

- (1) Subject to the provisions of section 37 of this Act, tax for any accounting period shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4) of this section.
- (2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or, where the accounting period is less than a year, in an amount equal to equal monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with section 25 (1) of this Act.
- (3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) of this section shall be due and payable not later than the last day of the month in question and shall be in an amount equal the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with section 25 (2) of this Act less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period
- (4) A final statement of tax shall be due and payable within 21 days after the due date of filing of the self-assessment of tax for such accounting period, and shall be the amount of the tax assessed for that accounting period less so much thereof as has already been paid under subsections (2) and (3) of this section or is the subject of proceedings.
- (5) Any instalments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purposes of sections 39 and 41 of this Act.

39. Penalty for non-payment of tax and enforcement of payment

- (1) If any instalment of tax due and payable pursuant to section 34 is not paid within the appropriate time limit prescribed in section 38 of this Act—
 - (a) a sum equal to five per cent of the amount of the instalment of tax due and payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;

- (b) the Service shall cause to be served a demand note upon the company assessed or upon the person in whose name the company is assessed; and if payment is not made within one month from the date of the service of such demand note, the Service may proceed to enforce payment as hereinafter provided;
 - (c) a penalty imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of any of the provisions of this Act, other than those relating to enforcement and collection of any tax.
- (2) Any company or person in whose name the company is assessed who without lawful justification or excuse, the proof whereof shall lie on the company, or such person assessed, fails to pay the tax within the period of one month prescribed in sub-section (1) (b) of this section, shall be guilty of an offence.
 - (3) The Service may, for any good cause shown, remit the whole or any part of the penalty due under subsection (1) of this section.

40. Collection of tax after determination of objection or appeal

Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal as the case may be shall be payable forthwith as to any part thereof in proceedings stayed pending such determination and as to the balance thereof within one month from the date of service on the company assessed, or on the person in whose name the company is assessed, of the notification of the tax payable, and if such balance is not paid within such period the provisions of section 35 of this Act shall apply.

41. Suit for tax by the Service

- (1) Tax may be sued for and recovered in a court of competent jurisdiction at the place at which payment should be made, by the Service in its official name.
- (2) For the purposes of this section, a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, if the amount claimed in any suit does not exceed the amount of the jurisdiction of the magistrate concerned with respect to personal suits.
- (3) In any suit under subsection (1) of this section the production of a certificate signed by any person duly authorised by the Service giving the name and address of the defendant and the amount of tax due by the defendant shall be sufficient evidence of the amount so due, and sufficient authority for the court to give judgment for the said amount.

42. Relief in respect of error or mistake

- (1) If any person who has paid tax for any accounting period alleges that any assessment, made upon him or in his name for that period, was excessive by

reason of some error or mistake in the accounts, particulars or other written information supplied by him to the Service for the purpose of the assessment, such person may at any time, not later than six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Service for relief or set off the credit against the liability of a similar tax payable to the Service and advise the Service accordingly.

- (2) On receiving any such application the Service shall inquire into the matter and subject to the provisions of this section shall by way of repayment of tax give such relief in respect of the error or mistake as appears to the Service to be reasonable and just.
- (3) No relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where such accounts, particulars or information was in fact made or given on the basis or in accordance with the practice of the Service generally prevailing at the time when such accounts, particulars or information was made or given.
- (4) In determining any application under this section the Service shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax or any part of the chargeable profits of the applicant, and for this purpose the Service may take into consideration the liability of the applicant and assessments made upon him in respect of other years.

43. Repayment of tax

- (1) Save as is otherwise in this Act expressly provided, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates.
- (2) The Service shall cause to be refunded or set-off at the option of the applicant upon presentation of relevant documents evidencing the tax to be refunded.
- (3) Any tax claimed based on this section, which is proven not to be due, shall attract a penalty at the current Central Bank of Nigeria prevailing interest rate from the date the payment or set-off was made up to the date the refund is made by the applicant

Chapter 7 – Offences and penalties.

44. Penalty for offences

- (1) Any person guilty of an offence against this Act or of any rule made thereunder for which no other penalty is specifically provided, shall be liable to a fine as determined by a regulation to be issued by the Minister, and where such offence is one under subsection (1) of section 17 of this Act, or is a

failure to submit a return under section 25 of this Act or is a failure, arising from the provisions of Part VI of this Act, to deliver accounts, particulars or information or to keep records required, a further sum as determined by a regulation to be issued by the Minister in compliance with Section 8 of the Petroleum Industry Governance Act for each and every day during which such offence or failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

- (2) Any person who—
- (a) fails to comply with the requirements of a notice served on him under this Act; or
 - (b) having a duty so to do, fails to comply with the provisions of section 22 of this Act; or
 - (c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him; or
 - (d) fails to submit any return required to be submitted by section 21 of this Act in accordance with that section or in accordance with that section and section 26 of this Act, shall be guilty of an offence.
- (3) Any offence in respect of which a penalty is provided by subsection (1) of this section shall be deemed to occur in Nigeria.

45. Penalty for making incorrect accounts, etc

- (1) Every person who without reasonable excuse—
- (a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses of which he is required by this Act to make up accounts; or
 - (b) prepares or causes to be prepared any incorrect schedule required to be prepared by section 22 of this Act by overstating any expenditure or any incorrect statement required to be prepared by section 22 of this Act by overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released; or
 - (c) gives or causes to be given any incorrect information in relation to any matter or thing affecting his liability to tax, shall be guilty of an offence and shall be liable to a fine of N5,000,000 in addition to the amount of tax which has been undercharged in consequence of such incorrect accounts, schedule, statement or information, or would have been so undercharged if the accounts, schedule, statement or information had been

accepted as correct

- (2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made at any time within six years after the end of the accounting period in respect of which the offence was committed.

46. False statements and returns

- (1) Any person who—
 - (a) for the purpose of obtaining any deduction, refund, rebate, reduction or repayment in respect of tax for himself or for any other person, or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation, or forges or fraudulently alters or uses, or fraudulently lends, or allows to be used by any other person any receipt or token evidencing payment of the tax under this Act; or
 - (b) aids, abets, assists, counsels, incites or induces any other person—
 - (i) to make or deliver any false return or statement under this Act;
 - (ii) to keep or prepare any false accounts or particulars affecting tax; or
 - (iii) unlawfully to refuse or neglect to pay tax, shall be guilty of an offence and shall be liable to a fine of N5,000,000 in addition to the amount of tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months, or to both such fine and imprisonment.

47. Penalty for failure to withhold tax

- (1) Any person who, being required to deduct withholding tax under this Act, fails to deduct or, having deducted, fails to remit to the Federal Inland Revenue Service within 21 days from the date the amount was deducted or the time the duty to deduct arose shall be guilty of an offence and liable to a penalty of 10 of the tax not withheld or not remitted plus interest at the Central Bank of Nigeria Monetary Policy Rate
- (2) The relevant tax authority shall cause to be served on or sent by registered post to any person who fails to withhold or, if withheld, fails to remit the amount required to be withheld, a notice stating the amount of tax not withheld or not remitted and the place at which payment should be made, and the provisions of this Act relating to tax assessment and recovery shall apply.

48. Penalties for offences by authorised and unauthorised persons

- (1) Any person who
 - (a) being a member of the Service charged with the due administration of this Act

or any assistant employed in connection with the assessment and collection of the tax who

- (i) demands from any person an amount in excess of the authorised assessment of the tax payable;
 - (ii) withholds for his, own use or otherwise any portion of the amount of tax collected;
 - (iii) renders a false return, whether verbal or in writing, of the amounts of tax collected or received by him;
 - (iv) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the Service or any other individual; or
- (b) not being authorised under this Act to do so collects or attempts to collect the tax under this Act, shall be guilty of an offence and be liable to a fine of N5,000,000 or to imprisonment for three years or both.

49. Deduction of tax at source

- (1) Income tax assessable on any company, partnership or person who provides petroleum operation services and related activities to a company carrying on petroleum operations in Nigeria, whether or not an assessment has been made, shall be recoverable from any payment (whether or not made in Nigeria) made by any person to such company, partnership or person.
- (2) For the purpose of this section, the rate at which tax is to be deducted and the nature of the activities and services for which a company making payment is to deduct tax at the date when the payment is made or credited, whichever first occurs
- (3) A company which has deducted tax under this section shall forward to the Service the amount of tax deducted and shall also forward a statement showing the name and address of the person who suffered the tax deduction and the nature of activities or services in respect of which any payment was made.
- (4) Income tax recovered under the provisions of this section by deduction from payments made to a company, partnership or person shall be set-off for the purposes of collection against tax charged on such company, partnership or persons by an assessment provided that the total of such deduction does not exceed the amount of the assessment.

50. Tax to be payable notwithstanding any proceedings for penalties

The institution of proceedings for or the imposition of, a penalty, fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any tax for which he is or may become liable.

51. Prosecution to be with the sanction of the Service

No prosecution in respect of an offence under sections 45, 46 or 48 of this Act may

be commenced, except at the instance of or with the sanction of the Service.

52. Saving for criminal proceedings

The provisions' of this Act shall not affect any criminal proceedings under any other Act or law

Chapter 8 – Miscellaneous

53. Restrictions on effect of the Personal Income Tax Act and other Acts.

No tax shall be charged under the provisions of the Personal Income Tax Act or any other Act in respect of any income or dividends paid out of any profits which are taken into account, under the provisions of this Act, in the calculation of the amount of any chargeable profits upon which tax is charged, assessed and paid under the provisions of this Act.

54. Double taxation arrangements with other territories

(1) If the Minister by treaty enters into any arrangement with the Government of any territory outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in accordance with Section 12 of the Constitution.

(2) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.

(3) An enactment or rules made under the provisions of subsections (1) and (2) of this section may include provisions for relief from tax for accounting periods commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.

(4) Any Regulation, Order or Rule made or deemed to have been by the Minister in respect of any double taxation arrangement with the Government of any territory outside Nigeria prior to the Effective Date shall continue to have effect as if made pursuant to the provisions of this Part.

55. Method of calculating relief to be allowed for double taxation

(1) The provisions of this section shall have effect where, under arrangement having effect under section 54 of this Act, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria; and in this section the expression.

"foreign tax" means any tax payable in that territory which, under the arrangements, is to be so allowed, and

"income" means that part of the profits of any accounting period which is liable to both tax and foreign tax, before the deduction of any tax, foreign tax, credit therefore or relief granted under subsection (6) of this section.

- (2) The amount of the credit admissible to any company under the terms of any such arrangements shall be set off against the tax chargeable upon that company in respect of the income, and where that tax has been paid the amount of the credit. may be repaid to that company or carried forward against the tax chargeable upon that company of any subsequent accounting period.
- (3) The credit for an accounting period shall not exceed whichever is the less of the following amounts, that is to say—
 - (a) the amount of the foreign tax payable on the income; or
 - (b) the amount of the difference between the tax chargeable under this Act (before allowance of credit under any arrangements having effect under section 54 of this Act) and the tax which would be so chargeable if the income were excluded in computing profits.
- (4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a company for any accounting period for foreign tax under all arrangements having effect under section 54 of this Act shall not exceed the total tax which would be ultimately borne by that company, for that accounting period, if no such credit had been allowed.
- (5) Where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.
- (6) Where the amount of the foreign tax attributable to the income exceeds the credit therefore computed under subsection (3) of this section, then the amount of that income, to be included in computing profits for any purpose of this Act other than that of subsection (3) of this section, shall be taken to be the amount of that income increased by the amount of the credit therefore after deduction of the foreign tax.
- (7) Where—
 - (a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividends; and
 - (b) a dividend is paid which is not of a class in relation to which the arrangements so provide, then, if the dividend is paid to a company which controls, directly or indirectly, not less than half of the voting power in the company paying the dividends, credit shall be allowed as if the dividend

were a dividend of a class in relation to which the arrangements so provide.

- (8) Any claim for an allowance by way of credit shall be made not later than three years after the end of the accounting period, and in the event of any dispute as to the amount allowable the Service shall give to the claimant notice of refusal to admit the claim which shall be subject to appeal in like manner as an assessment.
- (9) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for repayment of tax shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than three years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given;
- (10) Where a company is not resident in Nigeria throughout an accounting period no credit shall be admitted in respect of any income included in the profits of that company of that period.

56. Power to amend the First Schedule

At any time after the enactment of this Act, the First Schedule to this Act may be amended in accordance with Section 73 of this Act.

PART 3

DEEP OFFSHORE AND FRONTIER BASIN OPERATIONS

57. General Application of this Part.

- (1) The determination of tax under this Part shall be in accordance with Part Two of this Act subject to the provisions of this Part.
- (2) Notwithstanding anything to the contrary contained in any other enactment or law, the provisions of this Part shall apply to all upstream petroleum operations in the Deep Offshore and Frontier Basin under any petroleum licence, oil prospecting licence, or oil mining lease

58. Determination of petroleum income tax

- (1) The assessable tax for any accounting period of a company under this Part shall be a percentage of the chargeable profit for that period aggregated separately as follows:
 - (a) 40% for deep offshore upstream crude oil operations, and
 - (b) 30% for deep offshore upstream gas operations.

(2) incidental income is to be taxed with the associated operations.

(3) Nothing contained in this Act shall be construed as having exempted the contractors from the payment of any other taxes, duties or levies imposed by any Federal, State or Local Government, or Area Council Authority.

59. Production allowance

Parties engaged in upstream petroleum operations in the deep offshore and inland basins shall be entitled to production allowance as applicable in the second schedule of this Act

60. Payment of royalty

Parties shall pay concession rentals and royalty on crude oil, condensate or natural gas produced to the Commission in accordance with Schedule 3 of this Act

61. Chargeable tax on upstream petroleum operations

The chargeable tax on upstream petroleum operations in the terrain shall be split between the parties engaged in upstream petroleum operations in the deep offshore and inland basins in the same ratio as the split of profit oil or gas as defined in any agreement or arrangement between them and in the absence of any such agreement, as may be advised by the Commission.

62. Incentives for Frontier Basin Operations

(1) The Minister of Petroleum Resources upon the recommendation of the Commission may by an Order published in a gazette grant suspension of royalties for operations in Frontier Basin for a period of time.

(2) The assessable tax rate for Frontier Basin operations shall be 30% for crude oil and upstream gas operations

(3) The Commission may, by an Order published in a gazette, declassify acreage as a Frontier Acreage if, in the opinion of the Commission, such acreage is no longer qualifies as Frontier Basin as defined in section 77.

(4) The tax rate specified in subsection 2 of this section shall not apply to an acreage that has been declassified by the Commission as a Frontier Acreage, provided that the tax rate in subsection 2 of this section shall continue to apply to any Field in respect of which the Licensee has carried out any Significant Activity prior to the declassification by the Commission.

For the purposes of this subsection, “Significant Activity” means any exploration or appraisal drilling, development/production activities and decommissioning/reclamation.

63. Service to issue receipts to each parties

Where upstream petroleum operation is being undertaken by two or more parties, the Service shall make available to the parties separate receipts bearing the names of each party as defined in the agreement or such arrangement between the parties in accordance with each party’s payment of petroleum income tax under their

agreements and in the absence of an agreement, as advised by the Commission.

PART 4 – MIDSTREAM PETROLEUM OPERATION

64. General Application of this Part.

Except as otherwise provided, the provisions of this Part, that is Part 4 shall apply to midstream petroleum operations as defined in Section 77 of this Act

65. Application of Companies Income Tax Act to Midstream Petroleum Operations.

The determination of tax for companies in midstream petroleum operation shall be in accordance with the provisions of the Companies Income Tax Act Cap C21 Laws of the Federation of Nigeria, 2004 as amended or modified by this Act.

66. Incentives to the Midstream Petroleum operations

- (1) The following incentives outlined in subsection 2 of this section shall apply to companies carrying out midstream petroleum operations
- (2) The incentives are as follows:
 - (a) an initial tax-free period of five years
 - (b) as an alternative to the initial tax free period granted under paragraph (a) of this subsection, an additional investment allowance of 35 per cent which shall not reduce the value of the asset, so however that a company which claims the incentive provided under this paragraph shall not also claim the incentive provided under paragraph (c) (ii) of this subsection;
 - (c) accelerated capital allowances after the tax-free period, as follows, that is-
 - (i) an annual allowance of 90 per cent with 10 per cent retention, for investment in plant and machinery;
 - (ii) an additional investment allowance of 15 per cent which shall not reduce the value of the asset;
 - (d) tax free dividends during the tax free period, where-
 - (i) the investment for the business was in foreign currency; or
 - (ii) the introduction of imported plant and machinery during the period was not less than 30 per cent of the equity share capital of the company;
 - (e) Interest payable on any loan obtained shall be tax deductible
- (3) The tax-free period of a company shall start on the day the company commences production.
- (4) For the purposes of this section “gas fertilizer” means the marketing and distribution of natural gas for commercial purposes and includes power plant, fertilize natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines;

“tax-free period” means the tax-free period referred to in subsection (1) (a) of this section.

- (4) The incentives provided under subsection 2 of this section shall be available to:
 - (b) Companies engaged in the development and operation of petroleum product transportation (rails pipelines, barges);
 - (b) Companies operating gas processing facilities;
- (5) A company engaged in the development and operation of strategic gas transportation infrastructure and distribution pipelines as approved by the Commission shall in addition to the incentives under subsection 2 of this section be entitled to an additional tax free period of 5 years bringing the total tax free period to 10 years.
- (6) The incentives under subsection 2 of this section shall apply to the relevant companies and enterprises regardless of whether the investment is made in foreign currency or in the local currency.

PART 5 – DOWNSTREAM PETROLEUM OPERATION

67. General Application of this Part.

Except as otherwise provided, the provisions of this Part, that is Part 6 shall apply to downstream petroleum operations as defined in Section 77 of this Act.

68. Application of Companies Income Tax Act to Downstream Petroleum Operations.

There shall be levied upon the income of any company engaged in downstream petroleum operations a tax to be charged, assessed upon its profits and payable in accordance with the provisions of this Companies Income Tax Act Cap C21 Laws of the Federation of Nigeria, 2004 during each Accounting Period.

69. Incentives to Downstream Petroleum Operations

- (1) The following incentives outlined in subsection 2 of section 66 of this Act shall also apply to companies carrying out downstream petroleum operations which shall include:
 - (a) Companies engaged in the production and distribution of liquefied petroleum gas and other gas related products for domestic market;
 - (b) Companies engaged in manufacturing of LPG cylinders as well as LPG related infrastructure; and
 - (c) Companies operating downstream crude oil processing facilities, including refineries, lube plants and related infrastructures.

PART 6: GENERAL PROVISIONS

70. General Application of this Part

The provisions of this Part that is Part 6 of this Act shall apply to all the Parts in this Act.

71. Rules and Forms

- (1) The Minister may, from time to time, make rules generally for the carrying out of the provisions of this Act.
- (2) The Service may, from time to time, specify the form of returns, claims, statements and notices under this Act.

72. Royalty

All production of petroleum, including production tests shall be subject to royalties as provided in Schedule 3 of this Act

73. Periodic review

- (1) The provisions of this Act shall be liable to review after a period of seven years provided that any new fiscal terms (other than administrative and enforcement provisions) introduced following such review shall not apply to existing investments or projects sanctioned by the Commission prior to the commencement of the legislation introducing the new fiscal terms unless:
 - (a) The affected Company or Companies have elected in writing to the Service within 6 months of the fiscal terms becoming effective to be bound by such new fiscal terms; or
 - (b) In the case of a new project sanctioned prior to the commencement of the new legislation, the affected company or companies have not made significant investment in respect of the project within 12 months of the commencement of the new legislation introducing the new fiscal terms. For the purposes of this section, significant investment means such level of investment as determined by the Commission.
- (2) Any new rates or fiscal terms (other than administrative and enforcement provisions) introduced following such review shall not apply to existing investments or projects sanctioned by the Commission, the Asset Management Company or the National Oil Company prior to the effective date of such new rates or fiscal terms unless;
 - (c) the affected company or companies have elected in writing to the Commission within 6 months of the new rates or fiscal terms becoming effective to be bound by such new fiscal terms; or
 - (b) in the case of a new project sanctioned prior to the commencement of the new rates or fiscal terms the affected company or companies have not made significant investments in respect of the project within 12 months of the effective date of the new rates or fiscal terms. For the purposes of this section, significant investment means such level of

investment as determined by the Commission.

- (3) Following the 6th anniversary of the commencement of this Act, the Minister in charge of petroleum shall convene a meeting of stakeholders to discuss the desirability of reviewing fiscal terms of this Act having regard to the prevailing circumstances in the petroleum industry
- (4) Following the stakeholders meeting, where the Minister considers it necessary, the Minister shall initiate the process for the amendment of this Act.
- (5) Notwithstanding the provisions of this Act, any investor or group of investors may approach the Minister or the National Assembly to initiate the review of this Act.

74. Adaptation of laws

- (1) The relevant provisions of all existing enactments or laws, including but not limited to the Petroleum Industry Governance Act, shall be read with such modifications as to bring them into conformity with the provisions of this Act.
- (2) If the provisions of any other enactment or law, including but not limited to the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void.

75. Transitional Provisions.

- (1) Pending the establishment of the Commission, the Department of Petroleum Resources shall carry out the functions of the Commission in this Act.
- (2) The incentives granted under sections 11 and 12 of the Petroleum Profits Tax Act which is repealed by this Act shall continue to apply to projects which have been approved by the NNPC or DPR prior to the commencement of this Act and in respect of which significant investment has been made prior to the commencement of this Act. For the purposes of this section, significant investment means such level of investment as determined by the Commission.
- (3) Notwithstanding any provision under this Act, a company shall be entitled to claim under this Act any capital allowances, investment tax allowances and investment tax credits earned under any of the legislations repealed by this Act, but unutilised by the company before the commencement of this Act.

76. Repeal

From the effective date of this Act the following legislations are hereby repealed:

- (i) Petroleum Profit Tax Act Cap P13 LFN 2004; and
- (ii) the Deep Offshore and Inland Basin Production Sharing Contract Act Cap D3, LFN 2004.

77. Interpretation

In this Act, unless the context otherwise requires-

“Accounting Date” means the date to which a company usually prepares its accounting statement

“accounting period”, in relation to a company engaged in petroleum operations; means);

(a) a period of one year commencing on 1st January and ending on 31st December of the same year; or

(b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil or chargeable natural gas, domestic, export or both, and ending on 31st December of the same year; or

I any period of less than a year being a period commencing on 1st January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations, and

(d) in the event of any dispute with respect to the date of the first sale of chargeable oil above or with respect to the date on which the company ceases to be engaged in petroleum operations, the Minister of Petroleum Resources shall determine the same and no appeal shall lie therefrom;

“Act” means the Petroleum Industry Fiscal Act;

“Adjusted Profit” means adjusted profit as stated in Section 5 of this Act;

“Aggregate Gas Price” means the calculated volume-based weighted average price for gas in a particular month by the three consuming sectors of power generation, gas based industries and local distribution companies;

“Assessable Profit” means assessable profit as stated in Chapter 1 of Part 2 of this Act;

“Assessable Tax” means assessable tax as stated in Chapter 2 of Part 2 of this Act;

“Associated gas” means:

(a) natural gas, commonly known as gas-cap gas, which overlies and is in contact with crude oil in a reservoir; and

(b) solution gas dissolved in crude oil in a reservoir and emerging from the fluid as pressure drops;

“Barrel” means a barrel of 42 United States gallons;

“Barrel Of Oil Equivalent” means a unit of energy that is equal to $5.8 \times$ million BTU;

“Service” means the Federal Inland Revenue Service unless it is specifically stated otherwise;

“British Thermal Unit” or “BTU” means the calculation of the amount of energy needed to heat 1 pound of water by 1 degree Fahrenheit and 1 BTU = 1.06 Kilojoules

“Casing Head Petroleum Spirit” means any liquid hydrocarbons obtained in Nigeria from natural gas by separation or by any chemical or physical process but before the same has been refined or otherwise treated;

“Chargeable Condensates” in relation to a company engaged in upstream petroleum operation means condensate won or obtained by the company from such operations;

“chargeable natural gas” in relation to a company engaged in Petroleum operations means natural gas actually disposed by such company to a customer, based on arm’s length gas sales purchase contract (GSPA) in respect of which revenue is earned.;

“Chargeable Oil” in relation to a company engaged in Petroleum operations, means casing head petroleum spirit and crude oil won or obtained by the company from such operations;

“Chargeable Profit” means chargeable profit as stated in Chapter 5 of this Act;

“Chargeable Tax” means chargeable tax as stated in Chapter 5 of this Act;

“Commercial” means matters relating to economic ventures, returns on investments and profitability;

“Commission” means the Petroleum Regulatory Commission established under the Petroleum Industry (Governance and Institutional Reforms) Bill.

- (a) any rights to participation in the operation and or development of the PML by the Fund; or
- (b) financing obligations of petroleum operations in the PML by the Fund; or
- (c) pre-emption rights at a swap, re-assignment and/or divestment of the PML by any of the equity holders.

“Company” means anybody incorporated under any law in force in Nigeria or elsewhere;

“Compressed Natural Gas” or “CNG” means natural gas pressurized to 200 – 248 bar to reduce its volume and comprises mainly methane;

“Condensate” refers to a portion of natural gas of such composition that are in the gaseous phase at temperature and pressure of the reservoirs, but that, when produced,

are in the liquid phase at surface pressure and temperature;

“Concession” includes an oil exploration licence, an oil prospecting licence, an oil mining lease, a petroleum exploration licence, a petroleum licence, a marginal field, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

“Constitution” means the Constitution of the Federal Republic of Nigeria;

“Continuous production flaring” means the long-term flaring of natural gas that is associated with the process of crude oil production and that is not utilized for on-site or off-site energy needs, recovered for local or international gas markets, or re-injected;

“Contract Area” refers to the area of (i) an OPL and any PEL derived therefrom; or (ii) an OML and any PL derived therefrom plus any contractual consolidated areas as defined in the respective production sharing contracts;

“Crude Oil” means any oil (other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits) won in Nigeria either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil has been refined or otherwise treated;

“Decommissioning” or “Abandonment” refers to the approved process of cessation of operations of oil and gas wells, installations and structures, including shutting down installation’s operation and production, total or partial removal of installations and structures where applicable, chemicals, radioactive and all such other materials handling, removal and disposal of debris and removed items, environmental monitoring of the area after removal of installations and structures;

“Deep Offshore” means areas offshore Nigeria with a water depth in excess of 200 meters;

“Domestic Gas Supply Obligation” means the obligations of an upstream gas producer to dedicate a specific volume of gas towards the domestic gas demand requirement as stipulated by the Commission;

“Downstream” means all activities entered into for the purpose of processing, distribution and supply of petroleum to customers, construction and operation of facilities consuming petroleum, product pipelines, tank farms, stations for the distribution, marketing and retailing of petroleum products and other construction and activities incidental thereto;

“DPR” means the Department of Petroleum Resources;

“Dry Gas” means gas containing less than ten barrels of condensate per million standard cubic feet;

“Disposal” and “Disposed of”, in relation to chargeable oil owned by a company

engaged in petroleum operations, mean or connote respectively:

- (a) delivery, without sale, of chargeable oil to; and
- (b) chargeable oil delivered, without sale, to, a refinery or to an adjacent storage tank for refining by the Company

“Disposal” and “Disposed of”, in relation to chargeable natural gas owned by a company engaged in petroleum operations, mean or connote respectively:

- (a) delivery, without sale, of chargeable natural gas to; and
- (b) chargeable natural gas delivered, without sale, to, a gas processing plant or an LNG plant.

“Effective Date” means the date on which this Act comes into force;

“Field” includes an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature or stratigraphic condition, the surface area, although it may refer to both the surface and the underground productive formations;

“Fiscal Sales Point” means for oil and condensate, the fiscal metering point where title transfers or is deemed to have transferred at an export terminal, Floating Production Storage and Offtake (FPSO) vessel or a refinery in Nigeria; for gas, it is the fiscal metering point where title transfers or is deemed to have transferred at the point of sale;

“Frontier Acreages” means any or all licences located in an area defined as frontier in a regulation issued by the Commission pursuant to the Petroleum Industry Administration Act ;

“Frontier Basin” means the inland basins, other basins defined as frontier in a regulation issued by the Commission or a basin where exploration activities have not been carried out

“Gas” or “Natural Gas” means all gaseous hydrocarbons, and all substances contained therein, as exist in natural state in strata, associated or not with crude oil, and are in a gaseous state upon production from a reservoir and excludes condensates; process of oil production, and includes continuous production flaring but excludes safety flaring and non-continuous production flaring. Analogous expressions, such as “gas flare.”, “flaring of gas”,

“flare gas” shall have the same meaning as “gas flaring”;

“Gazette” means the Gazette of the Federal Government of Nigeria;

“Government” means the government of the Federal Republic of Nigeria

“High Court” means Federal High Court in Nigeria within whose jurisdiction -

(a) in relation to any offence under this Act, the place is situated where such offence is, for the purposes of this Act, deemed to have occurred;

(b) in relation to any suit for tax or appeal against an assessment of tax, the place is situated where the return under section 25 of this Act was submitted or where the assessment of the tax was made as the case may be;

I in relation to any direction under (2) of this Act, the place is situated from which the direction was issued; and

(d) in relation to any claim or other matter which is subject to appeal in like manner as an assessment, or to which the provisions of section of this Act apply with any modifications, the place is situated from which the claim or other matter was refused by the Service;

“Inland Basin” means any of the following basins, namely; Anambra, Benin, Benue, Chad, Bida, Dahomey, Gongola, Sokoto..

“Institutions” or “Institution” refers to the National Petroleum Directorate, the Nigerian Petroleum Commission, and the Petroleum Technology Development Fund, either jointly, any two or more of the said Institutions, or singly;

“LIBOR” means, as of any date of determination, the per annum rate of interest, based on a three hundred sixty (360) day year, rounded downwards, if necessary, to the nearest whole multiple of one-sixteenth of one percent (1/16th%), determined as the simple average of the offered quotations appearing on the display referred to as the “LIBOR Page” (or any display substituted therefore) of Reuters Monitor Money Rates Service or, if such “LIBOR Page” shall not be available, the simple average of the offered quotations appearing on page 3750 of the AP/Dow Jones Telerate Systems Monitor (or any page substituted therefore) for deposits in U.S. Dollars for a three month period, at or about 11:00 a.m. (London, England time) on the first London Banking Day of the calendar quarter in which the date of determination occurs (or, if the first day of such calendar quarter in which the date of determination occurs is not a London Banking Day, the immediately preceding London Banking Day). If neither such “LIBOR Page” nor such page 3750 or any successor page is available, or if for any reason a rate of interest cannot be determined as aforesaid, then the Parties shall designate an alternative mechanism consistent with Eurodollar market practices for determining such rate. For purposes of this definition, a “London Banking Day” is a day on which dealings in deposits in Dollars are transacted on the London interbank market;

“Licensee” means the holder of an Oil Producing Licence (“OPL”), Oil Mining Lease (“OML”), a Petroleum Exploration Licence (“PEL”) and Petroleum Licence (“PL”)

“Liquefied natural gas” or “LNG” means natural gas in its liquid state at approximately atmospheric pressure;

“loss” means a loss ascertained in like manner as an adjusted profit;

“Marginal field” means any field that has oil and gas reserves booked and reported annually to the Commission and have remained unproduced for a period of 7 years.

“measurement point” means a point at which petroleum is measured at the flow station pursuant to subsections (2) of section 5 of this Act;

“Midstream Petroleum Operations” means activities downstream of the Measurement Point(s) of Petroleum Licenses, or unrelated to Petroleum Licenses, OPLs or OMLs with respect to the construction and operation of facilities for heavy oil; construction and operation of crude oil transport pipelines, including the related pumping stations; acquisition, operation, leasing, rental or chartering of barges, coastal or ocean going tankers, rail cars and trucks for the transport of crude oil; construction, leasing and operation of crude oil tank farms and other storage facilities; construction and operation of refineries; other construction and activities incidental thereto and related administration and overhead.

“Minister of Petroleum Resources” means the Minister in charge of petroleum resources and overseeing the Petroleum industry in Nigeria;

“Minister” except where expressly stated otherwise means the Minister of finance charged with responsibility for matters relating to taxes on incomes and profits

“Mmbtu” means one million BTU;

“MMscf” means one million standard cubic feet;

“National Oil Company” means the National Petroleum

“Natural gas liquids” or “NGL” means hydrocarbons liquefied at the surface in separators, field facilities or in gas processing plants and include but are not limited to ethane, propane, butanes, pentanes, and natural gasoline, mayor may not include condensate;

“Natural Gasoline” means a mixture of hydrocarbons extracted from natural gas, which meet vapour pressures end point and other specifications for natural gasoline, as adopted by the GPSA with 69, 83, 97, 138, and 179 kKa (abs) being common specifications;

“Nigeria” includes the submarine areas beneath the territorial waters of Nigeria and the submarine areas beneath any other waters which are or at any time shall in respect of mines and minerals become subject to the legislative competence of the National Assembly;

“Nigerian company” means a company incorporated in Nigeria;

“NNPC” means the Nigerian National Petroleum Corporation;

“Non-continuous production flaring” means the flaring of gas streams that may result from short-term releases, including but not limited to pilot flaring, short-term well testing, commissioning of facilities, emergencies, equipment or compressor start-ups and shutdowns, equipment failure;

“Non-productive rents” means and includes the amount of any rent as to which there is provision for its deduction from the amount of any royalty under a petroleum licence to the extent that such rent is not so deducted;

“official selling price” means the price at which comparable crude oil, condensate or natural gas of similar quality could be sold on similar terms at similar times by parties under no compulsion to buy or sell and whereby none of such parties exerts or is in a position to exert influence on the other party having regard to all relevant factors as established by the Commission after consultation with the relevant stakeholders;

“oil mining lease” means a lease granted to a company, under the Nigerian Minerals and Mining Act;

“oil prospecting licence” means a licence granted to a company, under the Minerals Act or the Petroleum Act, for the purpose of winning petroleum, or any assignment of such licence;

“Person” means any individual, company or other juristic person;

“petroleum” means hydrocarbons and associated substances as exist in its natural state in strata, and includes crude oil, natural gas, condensate, bitumen and mixtures of any of them, but does not include coal;

“Petroleum Industry Act” refers to this Act;

“petroleum operations” means the winning or obtaining and transportation of petroleum in Nigeria by or on behalf of a company for its own account including production sharing contractors, by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of crude oil or gas by or on behalf of the company;

“Petroleum products” include motor spirit, gas oil, black oil, diesel oil, automotive gas oil, fuel oil, aviation oil, kerosene, liquefied natural gas, compressed natural gas, natural gas liquids, liquefied petroleum gases and any lubrication oil or grease or other lubricant;

“Petroleum licence” or “PL” means a licence pursuant to section xxxx of the Petroleum Industry Administration Act;

“Pilot flaring” means the continuous low volume flaring, not exceeding one million standard cubic feet per day, which is required as part of reasonable, prudent and good oil field practice to avoid venting of gas during any emergency discharge at the flare tip;

“production allowance” means an allowance provided for under the Third Schedule of this Act;

“production sharing contracts” means any agreement or arrangements made between the Asset Management Company or the holder of a Concession and any other petroleum exploration and production company or companies for the purpose of exploration and production of oil in the Deep Offshore and Inland Basins.

“profits” means profits for the purpose of section 5 of this Act;

“realisable price” means the actual price of crude oil or natural gas as sold by the company

“regulation” means rule or order having force of law issued by the Minister or any of the Institutions, in accordance with the provisions of this Act;

“rent” includes any annual or other periodic charge made in respect of a licence granted under this Act;

“resident in Nigeria”, in relation to a company, means a company the control and management of the business of which are exercised in Nigeria;

“royalties” means and includes—

(a) the amount of any rent as to which there is provision for its deduction from the amount of any revenue under an oil licence to the extent that such rent is so deducted; and

(b) the amount of any royalties payable under any such licence less any such rent deducted from those royalties;

“Safety flaring” means the flaring of natural gas that occurs because of a temporary or permanent lack of adequate gas processing facilities to prevent gas venting and injuries to people, equipment and the environment during process upsets, testing and/or commissioning;

“Service” means the Federal Inland Revenue Service;

“shallow water” means areas in the offshore of Nigeria up to and including a water depth of 200 meters;

“standard cubic feet” means, in relation to natural gas, the quantity of dry ideal gas at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen decimal six nine six (14.696) pounds per square inch absolute contained in a volume of one (1) cubic foot;

“standards” means limits made binding through laws, regulations or guidelines which must be observed within the appropriate regulatory framework in all cases where they are applicable;

“State” means the sovereign state of the Federal Republic of Nigeria, except where the context so admits or where it is specifically stated to mean a state of the Federation.

“tax” means chargeable tax;

“technical” refers to matters and issues that derive their consideration from a structured body of applied scientific knowledge, practical skills and special techniques that are interpreted strictly in accordance with stipulated rules, regulations, and standards;

“technical regulation” means the technical oversight of all upstream or downstream through standards and best practices as may be prescribed from time to time in laws, regulations or guidelines;

“Terrain” refers to the area of an OPL and any PEL or an OML and any PL.

“upstream” refers to activities entered into for the purpose of finding and developing petroleum and includes all activities involved in exploration and in all stages through, up to the production and transportation of petroleum from the area of production to the fiscal sales point or transfer to the downstream sector;

“upstream crude oil operations” means crude oil exploration operations, crude oil prospecting operations and all activities upstream of the measurement points, related to the winning of crude oil through wells or mining from petroleum reservoirs; drilling, fracking, completing, treatment and operation of wells producing crude oil; construction and operation of gathering lines and manifolds for crude oil and water; construction and operation of high and low pressure separators; construction and operation of facilities to treat crude oil; flaring of natural gas; compression and reinjection of natural gas in reservoirs; construction and operation of facilities for the production of electricity or heat from natural gas or other fuels as energy source for the winning of crude oil; injection or re-injection of water into the reservoirs; construction and operation of pipelines and other facilities for the discharge of water; construction and operation of fixed or floating platforms or other vessels required for the winning of crude oil; construction and operation of fixed or floating storage facilities of crude oil in the licence area; transportation to and from the licence area of personnel, goods and equipment; metering of well stream fluids; metering of crude oil at the measurement point prior to transportation; other construction and activities incidental thereto and related administration and overhead; sale and marketing of crude oil at the measurement point(s) and such other activities which by regulation are considered upstream crude oil operations;

“upstream gas operations” means the winning or obtaining of natural gas in Nigeria by or on behalf of a company on its own account for commercial purposes and shall include any activity or operation related to natural gas, including but not limited to the treatment of gas, that occurs up to the fiscal sales point or transfer to the downstream sector;

“upstream petroleum operations” means upstream gas operations and upstream crude oil operations;

78. Short Title

This Act shall be cited as the Petroleum Industry Fiscal Act 2018.

Explanatory Memorandum

This Act provides for the fiscal framework for the petroleum industry and for other related matters.

FIRST SCHEDULE
SECTION 13
Capital Allowances

1. Interpretation.

(1) For the purposes of this schedule, unless the context otherwise requires –

“**CONCESSION**” includes an oil prospecting licence, an oil mining lease, a petroleum exploration licence, a petroleum lease, a marginal field, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

“**LEASE**” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage and all cognate expression including “**LEASEHOLD INTEREST**” shall be construed accordingly and

- (a) where, with the consent of the lessor, a Licensee of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this schedule to continue so long as he remains in possession as aforesaid; and
- (b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the Licensee, the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease;

“**QUALIFYING EXPENDITURE**” means, subject to the express provisions of this schedule, expenditure incurred in an accounting period, which is –

- (a) Capital expenditure (hereinafter called “qualifying plant expenditure”) incurred on plant, machinery and fixtures;
- (b) Capital expenditure (hereinafter called “qualifying pipeline and storage expenditure”) incurred on pipelines and storage tanks;
- (c) Capital expenditure (hereinafter called “qualifying building expenditure”), other than expenditure which is included in paragraphs (a), (b) or (d) of this interpretation, incurred on the construction of buildings, structures or works of a permanent nature; or
- (d) Capital expenditure (hereinafter called “qualifying drilling expenditure”) other than expenditure which is included in paragraph (a) or (b) of this interpretation, incurred in connection with, petroleum operations in view on –

- (i) the acquisition of, or of rights in or over, petroleum deposits,
- (ii) searching for or discovering and testing petroleum deposits, or winning access thereto, or
- (iii) the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed cease to be carried on:

Provided that, for the purposes of this definition qualifying expenditure shall not include any sum which may be deducted under the provisions of section 6 of this Act.

- (2) For the purposes of this interpretation of qualifying expenditure, where expenditure is incurred by a company before its first accounting period and such expenditure would have fallen to be treated as qualifying expenditure (ascertained without the qualification contained in the foregoing proviso) if it had been incurred by the company on the first day of its first accounting period, and
 - (a) that expenditure is incurred in respect of an asset owned by the company then such expenditure shall be deemed to be qualifying expenditure incurred by it on that day; or
 - (b) that expenditure is incurred in respect of an asset which has been disposed of by the company before the beginning of its first accounting period then any loss suffered by the company on the disposal of such asset shall be deemed to be qualifying petroleum expenditure incurred by the company on that day and be deemed to have brought into existence an asset owned by the company in use for the purposes of petroleum operations carried on by the company, and any profit realised by the company on such disposal shall be treated as income of the company of its first accounting period for the purposes of subsection (1)(a) of section 9 of this Act.

2. Provisions Relating to Qualifying Petroleum Expenditure

- (1) For the purposes of this Schedule where-
 - (a) expenditure has been incurred before its first accounting period and such expenditure would have been treated as such qualifying petroleum expenditure (ascertained without the qualification contained in the proviso in the interpretation of qualifying expenditure) if it had been incurred in that first accounting period; and
 - (b) such expenditure (ascertained in the case of sub-paragraph (1) (a) of this paragraph without such qualification) shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purposes of such petroleum operations.

- (d) For the purposes of this Schedule, an asset in respect of which qualifying drilling expenditure has been incurred by any company for the purposes of petroleum operations carried on by it during any accounting period of the company, and which has not been disposed of, shall be deemed not to cease to be used for the purposes of such operations so long as such company continues to carry on such operations.
- (3) So much of any qualifying petroleum expenditure incurred on the acquisition of rights in or over petroleum deposits and on the purchase of information relating to the existence and extent of such deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information shall be left out of account for the purposes of this Schedule:

Provided that where the company which originally incurred such costs was a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale thereof, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

3. Owner and Meaning of Relevant Interest

- (1) For the purposes of this Schedule, where an asset consists of a building structure or works, the owner thereof shall be taken to be the owner of the relevant interest in such building, structure or works.
- (e) Subject to the provisions of this paragraph, in this Schedule, the expressions “the relevant interest” means, in relation to any expenditure incurred on the construction of a building, structure or works to which the company which incurred such expenditure was entitled when it incurred the expenditure.
- (3) Where, when a company incurs qualifying building expenditure or qualifying drilling expenditure on the construction of a building, structure or works, the company is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

4. Sale of Buildings, Etc

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the company which buys that interest shall be deemed, for all the purposes of this Schedule except the granting of petroleum investment allowance, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such

interest or to the original cost of construction, whichever is the less

Provided that where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sale with the omission. Of the words “except the granting of investment tax credit” and the original cost of construction shall be taken to be the amount of the purchase price on such sale;

5. Owner under PSC

Where the production sharing contract between the national oil company or the Holder and a contractor provides for the contractor to finance the cost of equipment and for such equipment to become the property of the national oil company or the Holder, the contractor shall be deemed to be an owner of the qualifying expenditure thereon, for the purposes of claiming of capital allowances.

6. Annual Allowance.

(1) Subject to the provisions of this Schedule, where in any accounting period, a company owning any asset has incurred in respect thereof qualifying expenditure wholly, necessarily and exclusively for the purposes of petroleum operations carried on by it, there shall be due to that company as from the accounting period in which such expenditure was incurred, an allowance (hereafter in this Act referred to as “an annual allowance”) at the appropriate rate percentum specified in the table to this Schedule.

(f) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, there shall be retained in the books, in respect of each asset 1 percent of the initial cost of the asset which may only be written off in accordance with sub-paragraph (3) of this paragraph.

(3) Any asset or part thereof in respect of which capital allowances have been granted may only be disposed of on the authority of a Certificate of Disposal issued by the Commission or any person authorised by him.

7. Asset to be in use at end of accounting period

An **annual allowance** in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any accounting period if at the end of such accounting period it was the owner of that asset and the asset was in use for the purposes of the petroleum operations carried on by it.

8. Balancing Allowances

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset, an allowance (hereinafter called “a balancing allowance”) shall be due to that company for that

accounting period of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred.

9. Balancing Charges.

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset, the excess (hereinafter called “a balancing charge”) of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date shall, for the purposes of subsection (1)(a) of section 9 of this Act, be treated as income of the company of that accounting period;

Provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred and shall not exceed the total of any allowances due under the provisions of this Schedule, in respect of such asset.

10. Residue

The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

11. Meaning of “Disposed of”

Subject to any express provision to the contrary, for the purposes of this Schedule-

- (a) a building, structure or works of a permanent nature is disposed of if any of the following events occur-
 - (i) the relevant interest is sold, or
 - (ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession, or
 - (iii) that interest, being a leasehold interest, comes to an end otherwise than on the company entitled thereto acquiring the interest which is reversionary thereon, or
 - (iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of petroleum operations carried

on by the owner thereof;

- (b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;

I assets in respect of which qualifying drilling expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the petroleum operations of the company incurring the expenditure either on such company ceasing to carry on all such operations or on such company receiving insurance or compensation monies therefor.

12. Value of an Asset

- (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or, if it was disposed of without being sold, the amount which, in the opinion of the Service, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

13. Apportionment

- (1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets 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 value of, or the price paid for, that asset, as the case may be.

For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

PETROLEUM INDUSTRY FISCAL BILL 2018

- (2) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

14. Part of an Asset

Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Service, be just and reasonable.

15. Extension of Meaning of “In Use”

For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse;

- (2) For the purposes of paragraphs 5, 6 and 7 of this Schedule—
 - (a) an asset in respect of which qualifying expenditure has been incurred by the owner thereof for the purposes of petroleum operations carried on by him shall be deemed to be in use for the purposes of such operations, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by that owner incurring such expenditure will be for the purposes of such operations;
 - (b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where any allowances have been given in consequence of this subparagraph (2) of this paragraph and the first use to which such asset is put is not for the purposes of such operations, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

16. Exclusion of Certain Expenditure

- (1) Subject to the express provisions of this Schedule, where any company has incurred expenditure which is allowed to be deducted under any provision (other than a provision of this Schedule) of this Act, such expenditure shall not be or be treated as qualifying expenditure.
- (2) Where any company has incurred expenditure upon any ocean going oil-tanker plying between Nigeria and any other territory that expenditure shall not be treated as qualifying expenditure.

17. Asset Used or Expenditure Incurred Partly for the Purpose of Petroleum Operations.

- (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset-

- (g) The owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of petroleum operations carried on by him and partly for other purposes;
 - (b) The asset in respect of which the owner has incurred qualifying expenditure thereof is used partly for the purposes of petroleum operations carried on by such owner and partly for other purposes.
- (h) Any allowances which would be due or any balancing charges which would be treated as income if both such expenditure were incurred wholly and exclusively for the purposes of such petroleum operations such asset were used wholly and exclusively for the purposes of such operations shall be computed in accordance with the provisions of this Schedule.
- (3) So much of the allowances and charges computed in accordance with provisions of sub-paragraph (2) of this paragraph shall be due or shall be so treated, as the case may be, as in the opinion of the Service is just and reasonable having regard to all circumstances and to the provisions of this Schedule

18. Disposal without Change of Ownership

Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of that asset after the date of such disposal –

- (i) Qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be left out of account;
- (b) Such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal.

19. Capital Allowance Rates

- (i) Qualifying expenditure shall be subject to the rates in the table below:

	1 st year	2 nd year	3 rd year	4 th year	5 th year
Exploration expenditure	100.0%	0.0%	0.0%	0.0%	0.0%
Two (2) Appraisal wells expenditure	100.0%	0.0%	0.0%	0.0%	0.0%
Intangible well	100.0%				

PETROLEUM INDUSTRY FISCAL BILL 2018

capex					
Tangible well capex	20.0%	20.0%	20.0%	20.0%	19.0%
Facilities capex	20.0%	20.0%	20.0%	20.0%	19.0%
Infrastructure capex	20.0%	20.0%	20.0%	20.0%	19.0%

(ii) Intangible well cost shall be deemed as 75% of the total well cost

SECOND SCHEDULE
SECTION 23(1)I

Production Allowance

1. There shall be a production allowance for crude oil production by a company determined as follows:
 - (a) for onshore – the lower of US \$3 per barrel or 30% of the official selling price.
 - (b) for shallow water areas – the lower of US \$3 per barrel or 30% of the official selling price.
 - (c) for deep water areas – the lower of US \$3 per barrel or 30% of the official selling price.
2. (a) There shall be a production allowance for natural gas fields of 50% of the value of the natural gas production or US \$ 1.5 per million Btu, whichever is lower:
 - (j) there shall be a production allowance for the development of dry gas fields of 100% of the value of the natural gas production or US \$ 1.5 per million Btu, whichever is lower:
3. There shall be a production allowance for condensate production from gas fields of US \$ 3 per barrel or 30% of the official selling price, whichever value is lower:
4. The allowances provided in this Schedule shall be allocated to companies as follows:
 - (1) (a) allowance shall be on the basis of the entitlement of the relevant barrels.
 - (b) A company entitled to production allowance under this Act shall only be able to claim the production allowance to the extent of its cost efficiency as determined by the Cost Efficiency Factor using the Table below.

Cost Efficiency Factor:

Cost Efficiency factor is defined as the ratio of 20% of total revenue to the total operating cost (i.e 20% Revenue/OPEX)

Cost Efficiency Factor	PA applicable Factor
CEF \leq 0.5	50%
0.5 < CEF < 1.2	50% to 120%
CEF \geq 1.2	120%

- (2) A company shall be entitled to additional production allowance based on the reserve replacement rate for the preceding year using the table below:

Reserve Replacement Ratio

RRR Range	Additional Production Allowance
RRR = 1	50%
1 < RRR < 1.25	75%
1.25 < RRR < 1.5	100%
RRR \Rightarrow 1.5	125%

Provided that such reserve replacement ratio shall be determined and certified by an independent expert recognised by the Commission, and subject to verification by the Commission.

5. The gas allowances pursuant to sub-paragraph (2)(a) and sub-paragraph (2)(b) of this Schedule, as applicable, shall only apply to gas production which is subject to royalties and where such gas is not utilized for the purposes of reinjection.
6. The total amount of the allowances computed under this Schedule shall be deducted from the amount determined pursuant to subsection (1) of section 16 of this Act and where these allowances cannot be deducted under subsection (1) of section 16 of this Act owing to there being an insufficiency of or no assessable profits of the accounting period the deductions shall be added to the aggregate amount to be computed for the following accounting period of the company, and thereafter shall be deemed to be an allowance due to the company, under relevant provisions of the Third Schedule to this Act for that following accounting period.
7. Where a field development produces any combination of crude oil, condensate and natural gas, the allowances under paragraphs (1), (2) and (3) of this Schedule shall be taken separately.
8. Subject to the provisions of paragraphs (9) and (10) of this Schedule, any company that is in, or has been in production on the commencement of this Act

shall not be eligible for the allowances under this Schedule.

9. Notwithstanding the foregoing;
 - (a) where a Licensee is producing crude oil with associated gas in a field at the commencement of this Act and is flaring substantial volumes of gas, and proposes a development program to the Commission) in order to eliminate routine flaring in the field in a significant manner, and such development plan is approved by the Commission , the Licensee shall be entitled to claim the allowances under paragraphs (2) and (3) of this Schedule, with respect to the natural gas and condensate production attributable to such development plan; and
 - (b) where a new gas field is being developed with respect to new production from formations that are deeper than any production from reservoirs at the effective date, based on an approved development plan and new gas field determination by the NPI, the Licensee shall claim the allowances under paragraphs (2) and (3) of this Schedule, with respect to the natural gas and condensate production attributable to such new gas field.
10. Where a field is covered by two or more PLs, the production allowances pursuant to this Schedule for each PL shall be determined based on the total unitized production.

THIRD SCHEDULE

**(SECTION 60)
PETROLEUM FEES, CONCESSION RENTALS AND ROYALTY**

ARRANGEMENT OF PARAGRAPHS

PART I – FEES

1. Fees payable for licences

PART II – RENTS

2. Rents for licenses
3. Payment of rent before grant of licence
4. Penalty for default in payment of rent
5. Verification and payment account

PART III – ROYALTIES

6. All petroleum production subject to royalties
7. Production and value determined at measurement point
8. Measurement point determined by the Commission
9. Measurement of production
10. Value of production to be determined by the Commission
11. Determination of average official selling price
12. Determination of value of natural gas
13. Special consideration for Determination of value of natural gas at measurement point.
14. Commission to establish procedure for determining production, official selling price and the value of natural gas
15. Measurement point for production
16. Royalties in kind or cash
17. Total royalty rates
18. Royalty rates based on daily production
19. Royalty rates based on value
20. Penalty for nonpayment of royalty

PART V – SUPPLEMENTAL

21. Interpretation
22. Short title

**SCHEDULE 4
SECTION 72**

PETROLEUM FEES, CONCESSION RENTALS AND ROYALTY

PART I – FEES

1. Fees payable for licenses and leases

The Commission shall through guidelines publish rates to be applicable to fees payable in respect of the following:

- a) application for a Petroleum Exploration License (“PEL”);
- b) application for a Petroleum License (“PL”);
- c) application to move from exploration phase of a PEL to the production phase of a PL

- d) application to withdraw any of the applications above;
- e) application to assign or sublet on contract an Petroleum License;
- f) application to terminate or effect a partial surrender on an Petroleum License;
- g) application for License to operate a Drilling Rig;
- h) license to operate a Drilling Rig;
- i) permit to export samples for analysis; and
- j) renewal of permit to export samples for analysis.

PART II– RENTS

2. Rents for licenses

Every Petroleum Exploration License ("PEL") and Petroleum License ("PL") shall be subject to a rent as determined by a regulation by the Commission.

3. Payment of rent before grant of licence or lease

A PEL or PL shall not be granted without prior payment of the applicable rent imposed under this section for the first year.

4. Penalty for default in payment of rent

Failure to pay the rent upon any anniversary of the PEL or PL shall result in the application of an interest rate of LIBOR plus 2% to the outstanding payment in US \$ and where the payment of the applicable rent is not made within three months, termination of such license pursuant to the Petroleum Industry Administration Act shall be initiated.

5. Verification and payment account

Any rents imposed under this section shall be verified by the Commission and be paid to the Federation Account.

PART III – ROYALTIES

6 All petroleum production subject to royalties.

- (1) All production of petroleum, including production tests shall be subject to royalties on a non-discriminatory basis with respect to all Licensees. Royalty shall be determined based on a Licence.
- (2) In the case of a farm-out of a field to a third party within a Licence, the royalty for such a field will be computed and determined separately.

7. Production and value determined at measurement point

The production and value of the petroleum for the purpose of determining the royalties shall be determined at the measurement point(s) in the Oil Prospecting Licence, Oil Mining Lease (“OML”) or Petroleum Licence ("PL") as defined in paragraph 8 of this Schedule and shall be determined monthly on the basis of the total monthly production and value of petroleum as provided for in this Act.

8. Measurement point determined by the Commission

The measurement point(s) referred to in paragraph 10 of this schedule shall be determined by a regulation to be issued by the Commission pursuant to paragraph 9 of this Schedule and where there is production from production tests under a Petroleum Licence, the Commission shall determine measurement point for such production.

9. Measurement of production

The production shall be measured at standard temperatures and pressures as defined from time to time by regulation and production shall not include:

- (a) any volumes burned, flared or vented with the approval of the Commission;
- (b) any volumes re-injected by the Licensee into reservoirs for the purpose of improving or enhancing production of crude oil or for conservation of natural gas;
- (c) any volumes used in the upstream crude oil operations or upstream gas operations for the production of electricity or heat for exclusive use in the operations of the PL; and
- (d) any water or sediments.

10. Value of production for royalty purposes

The value for the purpose of royalty calculation for crude oil and condensates, or various grades thereof, shall be based on the official selling price at the export terminals and shall be adjusted taking into consideration:

- (a) any quality differentials; and

- (b) any transportation costs from the point of production to the measurement point.

11. Determination of official selling price

The official selling price applicable to any calendar month for , crude oil and condensates produced from any OPL, OML or PL shall be determined by the Commission on the basis of information from non-confidential independent publications making such adjustments for quality and transport costs as appropriate to prices of comparable , crude oils and condensates sold in the international market, as determined by the Commission, for which appropriate information is available and with the objective to approximate as reasonably as possible the average fair market value of the crude oil and condensates for such month.

12. Determination of value of natural gas

The value for the purpose of royalty calculation for natural gas applicable to any calendar month shall be determined by the Commission and shall be based on the netback value at the measurement point as follows:

- (a) based on the composition of the natural gas at the measurement point, based on a reasonable estimate of the content of marketable gas, ethane, propane, butanes, natural gas liquids and plant condensates as will be typically derived by processing of the natural gas;
- (b) for export markets, the value of the marketable gas at the marketable gas delivery point(s) shall be determined:
 - (i) with respect to gas exported as LNG, as the international LNG market price, less the LNG shipping and marketing allowance and the gas liquefaction allowance and any applicable transportation tariffs between the inlet of the liquefaction plant and the marketable gas delivery point(s) and this procedure shall be subject to the provisions of paragraph (b) of subsection (8) of this section. The international LNG market price and the LNG shipping and marketing allowance shall be determined by the Commission, while ensuring a reasonable approximation of the average international fair market value of natural gas for such month;
 - (ii) with respect to gas exported by pipeline, as the gas export price pursuant to the respective international agreement, less any applicable transportation tariffs between the valuation point of the gas export price and the marketable gas delivery point in so far as the Commission shall determine that the applicable international price as well as the transportation tariffs reflect a reasonable approximation of the average international fair market value of natural gas

for such month;

- (c) for domestic markets, the value of the marketable gas at the marketable gas delivery points shall be determined:
 - (i) for gas supplied under wholesale gas contracts pursuant the provisions of the Petroleum Industry Administration Act for the contracted prices, provided such prices reflect fair market value as determined by the Commission, less any applicable transport costs between the point of sale and the marketable gas delivery point, where the point of sale is not the marketable gas delivery point. Where a Licensee provides gas under more than one wholesale gas contract, the price shall be the weighted average price of such contracts;
 - (ii) for gas supplied under the Domestic Gas Supply Obligation, the aggregate gas price as adjusted from time to time by the applicable regulations, and
 - (iii) where the Commission determines that competitive markets exist in Nigeria, the price determinations pursuant to paragraphs (i) and (ii) of this paragraph shall be replaced by a reference price at the appropriate gas market location, determined by the Commission; and
- (d) The net back value of the natural gas at the measurement point shall be:
 - (i) the value determined pursuant to subparagraph (i) of paragraph (b) of this subsection multiplied by the respective gas sales volumes, plus
 - (ii) the value determined pursuant to subparagraph (ii) of paragraph (b) of this subsection multiplied by the respective gas sales volumes, plus
 - (iii) the value determined pursuant to subparagraph (i) of paragraph (c) of this subsection multiplied by the respective sales gas volumes, plus
 - (iv) the value determined pursuant to subparagraph (ii) of paragraph (c) of this subsection multiplied by the respective sales gas volumes, plus
 - (v) the total values of the production of any ethane, propane, butane, pentanes, pentanes plus, natural gas liquids and plant condensates that can be allocated to the measurement point based on the composition identified in paragraph (a) of this section, less

- (vi) any gas processing allowances and gas transportation costs.

13. Special consideration for Determination of value of natural gas at measurement point.

The value of natural gas at the measurement point shall be determined taking into consideration the following:

- (a) The value of the natural gas per MMBtu at the measurement point for purposes of royalty valuation for Paragraph 1 and Paragraph 2 of this Schedule shall be the total value obtained under paragraph (d) of subsection (7) of this section divided by the total gas heating value at the measurement point(s) in the respective lease area;
- (b) The Commission shall adjust the values generated with respect to subparagraph (i) of paragraph (b) of subsection (7) of this section, pursuant to applicable regulations, for the marketable gas at the marketable gas delivery point, into an adjusted value based on an S-curve formula in such a manner that:
 - (i) the long term floor price shall be at least US \$ 1.50 per MMBtu, as adjusted pursuant to section 1 of this Schedule, and [is it realistic to include such a floor price]
 - (ii) under high international prices, discounts shall be provided which reflect the risked value that the Government obtains as a result of the establishment of a floor price;
- (c) Gas delivered at the measurement point for which royalty values shall be determined may be:
 - i. raw gas and the values pursuant to subparagraph (vi) of paragraph (d) of subsection (7) of this section shall apply, or
 - a. marketable gas, in which case subparagraphs (v) and (vi) of paragraph (d) of subsection (7) of this section shall not apply;
- (d) Gas processing allowances pursuant to sub-paragraph (vi) of paragraph (d) of subsection (7) of this section shall be applicable to any facilities which are conditioning or processing raw gas downstream of the measurement point, including but not limited to, plants removing sulphur, nitrogen or CO₂ from the gas, gas conditioning plants, natural gas liquids extraction plants and gas processing plants with the purpose of producing marketable gas, propane, butane, natural gas liquids and where applicable plant condensates. The allowance shall be based on the methodology established pursuant to section 201 of the Petroleum Industry Act as determined from time to time by the Commission pursuant to applicable regulations.

- (e) The gas liquefaction allowance pursuant to sub-paragraph (i) of paragraph (b) of subsection (7) of this section shall be applicable to the gas liquefaction plant and the related LNG storage tanks and export terminal. The allowance shall be based on the same procedure as provided for the gas processing allowance in paragraph (d) of this subsection;
- (f) The international LNG market price pursuant to subparagraph (i) of paragraph (b) of subsection (7) of this section in a particular month means the weighted average of the gas prices, for the previous month, for markets where Nigerian LNG is exported to as determined by the Commission under this Schedule. The weighting shall be based on volumes of Nigerian LNG exported to such markets. The following international market prices shall be used:
 - (i) for North America, the Caribbean and Mexico: the Henry Hub spot price average for the previous month,
 - (ii) for Northern Europe: The UK National Balancing Point price average for the previous month,
 - (iii) for Southern Europe: An assessment of the gas prices based on crude oil or oil product related gas price formulas for the previous month,
 - (iv) for East Asia: An assessment of the gas prices based on the Japan Crude Cocktail related gas price formulas for the previous months or such other formulas as may be applicable, and
 - (v) For other areas: An assessment of the gas prices as is representative for such markets.
 - (vi) The above market price indicators may be changed by the Commission where ample evidence exist that such price indicators are no longer relevant for such markets.
- (g) The LNG shipping and marketing allowance pursuant to subparagraph (i) of paragraph (b) of subsection (7) of this section shall reflect the following components with respect to costs and positive or negative differentials between the international LNG market price and the price of LNG FOB Nigeria:
 - (i) the positive or negative differential due to the geography of the LNG unloading location relative to the gas price in each of the markets,
 - (ii) a reasonable buyers discount or premium based on competitive international gas market conditions,
 - (iii) the re-gasification and terminating costs, and
 - (iv) the LNG shipping costs from Nigeria directly to the market.

14. Commission to establish procedure for determining production, official selling price and the value of natural gas

The detailed procedures for determining the production, official selling price and the value of natural gas pursuant to this section shall be established by regulation issued by the Commission.

15. Measurement point for production

(a) crude oil, condensates and natural gas production shall be measured at the point(s) where the Commission determines that petroleum leaves the petroleum licence area prior to transportation. Where no measurement takes place at these point(s) the Commission on its own initiative or at the request of the Service shall require the Licensee to install the necessary measurement equipment at such point(s). In exceptional cases the Commission, with the consent of the Service, may permit the measurement at another location, provided that production volumes and values pursuant to this section shall be calculated back to the point(s) that the Commission determines to be the point(s) where the petroleum leaves the petroleum licence area; and

(b) Where on the effective date of this Schedule, petroleum is measured downstream from where the measurement point should be located pursuant to this Schedule and where installing measurement equipment to measure production at the measurement point would be too costly in the opinion of the Commission, based on a comprehensive report by the Licensee, the current measurement practices may continue provided the adjustments are made as required in exceptional cases under this subsection, otherwise a program shall be submitted for the installation of equipment at the measurement point within 5 years from the effective date of this Schedule.

16. Royalties in kind or cash

(1) At the option of the Government, the Commission shall inform the Licensee whether the Government elects to take the royalty in kind or in cash.

(2) Where the Government elects to take the royalty in kind, the Commission shall, upon 90days notice in writing to the operator of the relevant licence, nominate the Nigerian Petroleum Assets Management Company or the National Oil Company or any other company to lift the royalty crude on behalf of the Government.

(3) With respect to crude oil and condensates, the Commission shall inform the Licensee with a three month notice whether the Government shall take the royalty in kind or in cash. Such option may be exercised at

multiple times and where no such notice is provided, the Licensee shall pay the royalty in cash.

- (4) With respect to natural gas, the Commission shall inform the Licensee prior to the granting of the licence whether the Government shall take the royalty in kind or in cash. Such option may be exercised once and where no such notice is provided, the Licensee shall pay the royalty in cash.
- (5) Where the royalty is paid in cash, the amount of royalty shall be based on the values established pursuant to paragraph 1 of this Schedule.
- (6) Where royalty is paid in cash, it shall be paid in the month following the month during which the petroleum was measured at the measurement point or such other point pursuant to this Schedule.
- (7) (a) Where the royalty is to be taken in kind by the Government, the Commission shall agree with the Licensee on a lifting schedule that is consistent with a monthly payment of royalties in cash; and

(b) Where the royalty is to be taken in kind by Government pursuant to subparagraph (2) of this paragraph, the Commission and the nominated company shall agree on a lifting schedule that is consistent with a monthly payment of royalties in cash. The nominated company shall pay such cash equivalent of the crude lifted into the designated account of the Federation Account.

17. Total royalty rates

- (1) The total royalty rate shall be the royalty rate based on average monthly daily production pursuant to paragraph 3 of this schedule plus the royalty rate based on the average monthly value pursuant to paragraph 4 of this Schedule.
- (2) For the purposes of Paragraph 18 of this Schedule royalties shall be calculated on a license area basis

18. Royalty rates based on daily production

- (1) Subject to the provisions of sub-paragraph (6) of this Paragraph, the average monthly daily production shall be based on the total production for the month from each PL divided by the number of days in the month and shall be determined separately for:
 - (a) the volume of crude oil plus the volume of condensates spiked into the crude oil prior to the measurement point or the point where crude oil is measured pursuant to sub-paragraph (10) of paragraph 1 of this Schedule. In this case condensates shall be dealt with as crude oil for the purposes of this Act;
 - (b) for the volume of condensates where condensates are separately measured at the measurement point; and

(c) for the volume of natural gas.

(2) Pursuant to the provisions of subsection (1) of section 72 of this Act, the royalty rates for crude oil by volume shall be –

(a) for onshore areas:

Tranches (kbpd)	Royalty Rate
First 2.5	2.5%
Next 7.5	7.5%
Next 10.0	15.0%
Above 20.0	20.0%

(b) for shallow water areas:

Tranches (kbpd)	Royalty Rate
First 10	5.0%
Next 10	10.0%
Next 10	15.0%
Above 30	20.0%

(c) for deep water areas,

Tranches (kbpd)	Royalty Rate
First 50	5.0%
Next 50	7.5%
Above 100	10.0%

(3) Pursuant to the provisions of subsection (1) of section 72 of this Act, the royalty rates for natural gas shall be based on the geographical area:

(a) for onshore areas,

Tranches (MMscf)	Royalty Rate
First 400	2.0%
Next 400	4.0%
Above 800	6.0%

(b) for shallow water areas,

Tranches (MMscf)	Royalty Rate
First 600	2.0%
Next 400	4.0%
Above 1000	6.0%

(c) for deep water areas,

Tranches (MMscf)	Royalty Rate
First 600	2.0%
Next 600	4.0%
Above 1200	6.0%

(4) Pursuant to the provisions of subsection (1) of section 72 of this Act, the royalty rates for condensates pursuant to paragraph (b) of subsection (1) of this section shall be based on the geographical area:

PETROLEUM INDUSTRY FISCAL BILL 2018

- (a) for onshore areas
- | Tranches (kbpd) | Royalty Rate |
|-----------------|--------------|
| First 2.5 | 2.5% |
| Next 7.5 | 7.5% |
| Next 10.0 | 15.0% |
| Above 20.0 | 20.0% |
- (b) for shallow water areas
- | Tranches (kbpd) | Royalty Rate |
|-----------------|--------------|
| First 10 | 5.0% |
| Next 10 | 10.0% |
| Next 10 | 15.0% |
| Above 30 | 20.0% |
- (c) for deep water areas,
- | Tranches (kbpd) | Royalty Rate |
|-----------------|--------------|
| First 50 | 5.0% |
| Next 50 | 7.5% |
| Above 100 | 10.0% |
- (5) where a PL produces crude oil, condensates or natural gas partly from onshore and partly from offshore, or partly from shallow water areas and partly from deep water areas, the weighted average royalty shall be calculated in the following manner:
- (a) by determining the total production of the PL from both geographical areas; and
- (b) by determining the production on either side of the geographical boundary based on the location of the well intersections with the producing reservoirs, as determined by the Commission based on applicable regulations; and
- (c) by determining two royalty rates:
- on the assumption that all petroleum is on one side of the boundary applying the respective sliding scale, and
 - on the assumption that all petroleum is on the other side of the boundary applying the respective sliding scale;
- (d) the weighted average royalty rate will be based on the production determined under item (b) of this subparagraph and the royalty rates determined under item(c) of this subparagraph, in relation to the total production determined under (a) of this subparagraph
- (6) for frontier acreage the royalty rate based on daily production shall be 5% for crude oil, condensates and natural gas irrespective of the level of average monthly daily production.

- (7) The production and royalty levels under subparagraphs (2), (3) and (4) of this paragraph shall be based on the sum of production from all PLs aggregated at a company level and such royalty determination procedures shall continue after granting of the corresponding petroleum licences pursuant to the Petroleum Industry Administration Act.
- (8) Where a company establishes other companies pursuant to subparagraph (2), (3) and (4) of this paragraph, which in the opinion of the Commission was carried out to minimize royalty payment, the Commission may impose royalty rates by assuming the companies so established were one company.
- (9) Any PL's granted to marginal field operators pursuant to the Petroleum Industry Administration Act shall be subject to the royalties as defined in sub-paragraph (1), (2), (3) and (4) of this paragraph.
- (10) Where a field is covered by two or more PLs, the royalty rates based on daily production pursuant to this section shall be determined based on the total production from such PLs.

21 Penalty for Non-Payment of Royalty

Where royalty is not paid when due pursuant to the Petroleum Industry Administration Act, an interest of LIBOR plus 3 point basis shall be applied to the outstanding payment, and where a royalty payment is not made within three months after the month in which the royalty is due, revocation of such licence pursuant to the Petroleum Industry Administration Act shall be initiated.

PART V – SUPPLEMENTAL

22. Interpretation

“CO₂” means carbon dioxide;

“**gas processing allowance**” means an allowance for the purpose of determining the value of natural gas determined pursuant to paragraph (e) of subsection (8) of section 334 of this Act;

“**Henry Hub spot price**” means the monthly average Henry Hub spot price in the United States as specified by regulations under this Act;

“**international LNG market price**” means the price established pursuant to subparagraph (g) of subsection (8) of section 334 of this Act;

“**LNG shipping and marketing allowance**” means the allowance determined

pursuant to subparagraph (g) of subsection (8) of section 334 of this Act;

“marketable gas” means a mixture mainly of methane and other hydrocarbons, if necessary through the processing of the raw gas for the removal or partial removal of some of its constituents, and which meets specifications determined by the Commission for distribution to wholesale and small customers

(a) for use as a domestic, commercial and industrial fuel; and

(b) as feedstock or industrial raw material;

“marketable gas delivery point” means a point where marketable gas is made available to customers, at the exit of a central gas processing facility, gas processing plant or gas conditioning plant or at a measurement point, or such other location immediately downstream of a facility in which such gas has been produced, processed, conditioned or treated in order to produce marketable gas;

“wholesale gas contract” means contract for sale of gas to a wholesale gas customer;