

PETROLEUM INCOME TAX LAW, 1987

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CHARGEABLE INCOME

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PETROLEUM INCOME TAX LAW, 1987

IN pursuance of the Provisional National Defence Council (Establishment) Proclamation, 1981 this Law is hereby made:

PART I—IMPOSITION OF TAX AND ASCERTAINMENT OF CHARGEABLE INCOME

1. Every person carrying on petroleum operations shall, subject to the provisions of this Law, pay for each year of assessment a tax on his chargeable income calculated in the manner provided in this Part. Charge of tax.

2. (1) The chargeable income of any person carrying on petroleum operations for any year of assessment from and after the year of commencement shall be calculated by deducting from his gross income for that year the amounts specified in section 3. Ascertainment of chargeable income.

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

3. (1) For the purpose of computing the chargeable income of any person for any year of assessment there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred by such person for the purpose of petroleum operations during the year of assessment including the following: Deductions allowed in ascertaining chargeable income.

- (a) rentals;
- (b) royalties;
- (c) sums payable by way of interest, fees or charges upon any money borrowed by any such person, where the Commissioner is satisfied that such interest, fees or charges were payable on capital employed for the purpose of petroleum operations:

Provided that where in the opinion of the Commissioner, the rate of interest, fees or charges payable on such loans, are excessive by reference to the Commercial rate for similar loans generally prevailing at the time the loan was made, the deduction shall be limited to such commercial rate;

- (d) any expense incurred for repair of premises, plant, machinery or fixtures employed for the purposes of petroleum operations or for the repair or alteration of any implements, utensils or articles so employed:

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Provided that if such premises, plant, machinery, fixtures, implements, utensils or articles are employed in part for domestic or private purposes so much of any such expenses as may be determined by the Commissioner to be in respect of such purposes shall not be deducted hereunder;

- (e) debts directly incurred in the conduct of petroleum operations and proved to the satisfaction of the Commissioner to have become bad or doubtful in the year of assessment in respect of which the chargeable income is being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that year of assessment.

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 the year of assessment nor in respect of any particular debt shall include any amount deducted under the provisions of this section in determining the chargeable income of a previous year of assessment;
- (ii) all sums recovered during the same year of assessment on account of amounts previously deducted in respect of bad or doubtful debts shall for the purposes of this Law be treated as income incidental to such operations for that year of assessment;
- (iii) it is proved to the satisfaction of the Commissioner that the debts in respect of which such deduction is claimed were either:
- (a) included as a receipt from the carrying on of petroleum operations in the year of assessment in which they were incurred; or
- (b) advances made in the normal course of petroleum operations not falling within the provisions of section 4 (c) of this Law:
- (f) any contribution to a pension or provident fund or other similar fund which is approved by the Commissioner:

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Provided that where the aggregate of the contribution of the employer and employee to any such fund, for any year of assessment exceeds twenty-five per cent of the remuneration paid by the employer to the employee for such year of assessment the aggregate of the deductions to be allowed shall be twenty-five per cent of such remuneration and in every such case the Commissioner shall determine the amounts of the deductions to be allowed to the employer and the employees respectively:

Provided further that where any such fund is first established and a special contribution is made thereto by the employer whereby persons in his employment whose employment commenced prior to the establishment of the fund may qualify for benefits thereunder in respect of such prior employment, the Commissioner may, when approving the fund, authorise such deductions in respect of such special contribution as he may deem fit;

- (g) any sums actually expended by that person in the education or training of citizens and nationals of Ghana in approved educational and technical institutions (including attachment with such person) in any aspects of petroleum operations, or in the provision of scientific and educational materials and equipment pursuant to the terms of a Petroleum Agreement;
- (h) sums representing a special carried interest allowance for that year of assessment including in the event that production from any development and production area ceases, any amount which would have been recoverable from special carried interest allowance if production from such development and production area to which such allowance relates had not ceased before the sum advanced in respect of Corporation participation had been fully reimbursed;
 - (i) such other deductions as may be prescribed by any rule made under the provisions of subsection (4) of this section.

(2) There shall be deducted in computing the chargeable income of any person carrying on petroleum operations for any year of assessment from and after the year of commencement amounts allowable as capital allowance computed and allocated in the manner set forth in the provisions of the Schedule to this Law.

(3) There shall be deducted in computing the chargeable income of any person in any year of assessment after the year of

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commencement the amount of any loss incurred by such person during any previous year of assessment;

Provided that:

- (i) a deduction under this paragraph shall be made so far as possible in computing the amount, if any, of the chargeable income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made, then in computing the chargeable income of the immediately succeeding year of assessment and so on;
- (ii) in no circumstances shall the aggregate deduction in respect of any such loss exceed the amount of such loss;
- (iii) no deduction under the provisions of this paragraph shall be made in respect of any loss incurred prior to the coming into force of this Law.

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

Deductions not allowed in ascertaining chargeable income.

4. Subject to the express provisions of this Law, and without prejudice to the deduction of expenses provided for in section 3 of this Law for the purpose of ascertaining the chargeable income arising from petroleum operations of any person no deduction shall be allowed in respect of:

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

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- (i) any contribution to a pension, provident or other similar fund not within the terms of section 3 of this Law.

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

Artificial or fictitious transactions.

(2) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious:

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

PART II—ASCERTAINMENT OF CHARGEABLE TAX

6. The amount of tax payable under this Law (hereafter referred to as "chargeable tax") by any person carrying on petroleum operations in respect of any year of assessment or quarterly period shall be fifty per cent of the chargeable income arising from such operations in respect of the said year or period unless the Petroleum Agreement to which such person is a party makes alternative provision:

Chargeable tax.

- (a) for the payment of income tax at a different rate; or
- (b) for the payment of a tax in lieu of income tax or in lieu of income tax at the rate of fifty per cent otherwise payable hereunder.

PART III—PERSONS ANSWERABLE FOR CHARGEABLE TAX

7. (1) The manager or any principal officer in Ghana of every company or body of persons shall be answerable for doing all such acts as are required to be done by virtue of this Law for the assessment of tax or provisional tax or both of such company or body and for payment of such taxes.

Managers, partners principal officers.

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(2) In the case of a partnership engaged in petroleum operations, the partner resident in Ghana, or if there be no such partner, the manager, shall be answerable for doing all such acts as are required to be done by virtue of this Law and for the charge to tax of such partnership and for payment of the tax.

Commissioners
power to
designate
agents.

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

(2) For the purpose of this section, the Commissioner may require any person to give him information as to any moneys, funds or other assets which may be held by him, or due by him to any other person.

Indemnity.

9. Every person answerable under this Law for the payment of tax or provisional tax or both on behalf of another person may retain out of any money or assets coming into his hands or within his *de facto* control on behalf of such other person so much thereof as shall be sufficient to pay such taxes; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in accordance with the provisions of this Law.

PART IV—RETURNS

Annual
returns.

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

(2) Every annual return delivered under subsection (1) of this section shall contain the following statements:

- (a) a copy of the certified statement of accounts of such petroleum operations for such year of assessment audited before submission by an accountant who shall be a Chartered or Practising Accountant within the meaning of the Chartered Accountants Act, 1963 (Act 170);
- (b) an estimate of the tax due on the chargeable income computed;
- (c) a statement containing the full names, addresses, nationality, salaries, wages, fees, allowances and other remuneration of his employees in Ghana;

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- (d) a statement of the amount of production of petroleum during such year of assessment and the share of such person in that production; and
- (e) a statement of the price paid for the sale or export without sale of that person's share of petroleum produced in that year of assessment in accordance with section 2 of this Law.

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

(4) Every person chargeable with tax under this Law shall deliver along with his annual returns a remittance in settlement of his tax liability as computed in his returns.

(5) Where there is a dispute as to the World Market Price applicable in respect of such person's share of petroleum produced for any period in such year of assessment a return indicating the amount of chargeable income shall be computed by such person on the basis of the contractor's proposed price:

Provided that in the event of final determination of the price in accordance with the terms of a petroleum agreement there shall pursuant to this section be submitted fresh returns reflecting the determined price and any adjustments and payments of tax due in respect thereof. Such returns shall be submitted within forty-five days of the final determination of the price.

11. (1) Every person engaged in petroleum operations shall, not later than thirty days after the expiry of any quarterly period, furnish or deliver to the Commissioner: Quarterly
returns.

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

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

12. (1) Where it is shown by any person to the satisfaction of the Commissioner that owing to some reasonable cause that person is not able to make a return required by the provisions of Extension
of time and
provisional
returns.

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section 10 (1), 11 (1) or 14 of this Law within the time specified in such sections the Commissioner may grant such extension of the time specified as he may consider necessary.

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

Power to
call for
further
information.

13. The Commissioner may give notice in writing to any person engaged in petroleum operations when and as often as he thinks necessary requiring him to furnish within the time limited by such notice fuller or further information as to any matters either referred to in section 10 of this Law or to any matters which the Commissioner may consider necessary for the purpose of this Law.

Additional
returns.

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

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

Power to
enter
premises.

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

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out any such search he may:

- (a) open or cause to be removed and opened, any article in which he considers any moneys, assets, documents or records may be contained;
- (b) seize any money or assets and any documents or records which he considers may afford material evidence of the liability of any person to tax;
- (c) retain such moneys or assets and any such documents or records or any copies thereof for such periods as may be reasonable for their examination or for the purposes of a prosecution or the recovery of the tax due.

(2) The Commissioner or such duly authorised agent conducting the search shall:

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

(3) Any person who prevents the Commissioner or his duly authorised agent from exercising his powers under subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine of not less than ₦50,000.00 or to imprisonment with hard labour for a term of not less than two years.

(4) For the purpose of this section any person who without reasonable cause or excuse destroys or conceals any relevant document shall be guilty of an offence and liable on summary conviction to the fine or imprisonment specified in subsection (3) of this section.

PART V—ASSESSMENT

16. (1) Subject to subsection (2) of this section, the Commissioner shall assess every person chargeable with tax for any year of assessment or with provisional tax for any quarterly period as soon as may be after:

- (a) receipt of returns filed by such person; or
- (b) the expiry of the periods (including extensions) for submission of such returns provided for in this Law:

Provided that where returns are made under section 12 (2) of this Law the Commissioner shall pursuant to section 14 (1) of this Law call for additional returns from such person before making a final assessment.

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

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

Assess-
ments.

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

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

- (a) within the time specified under the provisions of sections 10, 11 or 14 of this Law;
- (b) within any extended time under the provisions of section 12 (1) of this Law; or
- (c) within the fourteen days specified in section 12 (2) of this Law, as the case may be and the Commissioner is of opinion that such person is liable to pay tax or provisional tax, as the case may be, he may estimate, according to the best of his judgement, the amount of the chargeable tax to be paid by such person for the year of assessment or the quarterly period respectively for which any such statement or return is required, and make an assessment accordingly. Such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a statement or return:

Provided that nothing in this subsection shall affect the right of the Commissioner to make any additional assessment under the provisions of section 17 of this Law or to certify any repayment under the provisions of section 25 of this Law if upon ascertainment of the relevant facts it appears to the Commissioner that any such additional assessment or repayment, as the case may be should be made.

Additional
assessment.

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

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

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

(2) The Commissioner shall in respect of each assessment cause to be served upon each person assessed a notice of assessment stating the amount of chargeable income liable to tax or to provisional tax charged, the place at which, and the time by which payment of any outstanding amount of such tax or provisional tax should be made and informing him of his rights of appeal under the provisions of sections 19, 20 and 21 of this Law:

Provided that no assessment under section 16 of this Law nor any additional assessment under section 17 of this Law shall be made later than 4 years from the end of the year of assessment or quarterly period to which such assessment or additional assessment relates.

PART VI—OBJECTIONS AND APPEALS

19. (1) If any person disputes an assessment made upon him in accordance with the provisions of this Law he may apply to the Commissioner to review and revise such assessment. Such application shall be by written notice stating the precise grounds of objection, and shall be made within thirty days from the date of service of the notice of such assessment and shall state the amount of chargeable income made by such person during the year of assessment and the amount of tax which he claims should be charged: Objections and review.

Provided that the Commissioner upon being satisfied that owing to absence from Ghana, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within such period, shall extend the period as may be reasonable in the circumstances.

(2) After receipt of a notice of objection referred to in subsection (1) of this section the Commissioner may within such time and at such place as he shall specify, require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary and may by notice, within such time and at such place as he shall specify, require any person to give evidence orally or in writing respecting any matters necessary for the ascertainment of the tax or provisional tax payable, and the Commissioner may require such evidence if given orally to be given on oath or if given in writing to be given by statutory declaration.

(3) In the event of any person, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount for which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax or provisional tax under the amended assessment shall be served upon such person.

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(4) If any person, who has objected to an assessment made upon him, fails to agree with the Commissioner in the manner provided in subsection (3) of this section, the Commissioner shall give him notice of refusal to amend his assessment as desired by such person or may amend such assessment if he is satisfied that the assessment is in any event excessive by some amount by reducing it by such amount, and notice of the amended assessment showing the tax or provisional tax payable thereunder shall be served upon such person together with the notice of refusal.

Appeals to
the Office
of the
Revenue
Commis-
sioners.

20. (1) Any person who, is aggrieved by a notice of refusal, or is dissatisfied with an assessment whether amended, under the provisions of section 19 (4) of this Law, or not, may appeal to the Revenue Commissioners against such an assessment or amended assessment upon giving notice in writing to the Commissioner within thirty days after the date of service upon him by the Commissioner of notice of refusal to amend the assessment under the provisions of section 19 (4) of this Law:

Provided that notwithstanding the lapse of such period of thirty days, any person may bring an application against an assessment or amended assessment if he shows to the satisfaction of the Revenue Commissioners that, owing to absence from Ghana, sickness or other reasonable cause he was prevented from giving notice of such application within such period, and that there has been no unreasonable delay on his part.

(2) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(3) The Revenue Commissioners may confirm, reduce, increase, or annul the assessment or make such order thereon as it may deem fit.

(4) Notice of the amount of tax payable under the assessment as determined by the Revenue Commissioners shall be served by the Commissioner either personally, or by registered post, on the appellant.

Appeals to
the Supreme
Court.

21. An appeal against the decision of Revenue Commissioners on both questions of law and fact shall lie to the Supreme Court.

Assessment
final and
conclusive.

22. (1) Except as expressly provided in this Law;

(a) where no objection has been lodged against any assessment under the provisions of section 19 (1) of this Law; or

(b) where the amount to be assessed has been agreed to under the provisions of section 19 (3) of this Law; or

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- (c) where after the determination of an objection made under the provisions of section 19 (4) of this Law, whether the assessment was reduced or otherwise, no appeal to the Revenue Commissioners has been made under the provisions of section 20 of this Law; or
- (d) where such appeal has been determined by the Revenue Commissioners and no further appeal taken; or
- (e) where such amount has been determined on appeal;

the assessment as made, or agreed to, or reduced, or determined, as the case may be, shall be final and conclusive for all the purposes of this Law as regards the amount of such assessment.

(2) Where any application to the Revenue Commissioners has been brought against an assessment and then withdrawn such assessment as made or reduced by the Commissioner shall be final and conclusive for all purposes of this Law.

(3) Nothing in this Part of this Law shall prevent the Commissioner from making any assessment or additional assessment for any year of assessment which does not involve re-opening any matter, relating to that period, which has been determined on appeal by the Revenue Commissioners or the Supreme Court.

PART VII—COLLECTION, RECOVERY AND REPAYMENT OF TAX

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

Commissioners to make determination where objection pending.

(2) The amount of tax to be paid by any person under this section shall not be less than fifty per cent of the tax specified in the appropriate notice of assessment and shall be paid within such time as the Commissioner may specify by written notice:

Provided that where payment of any tax has been held over pending the result of an objection, the tax outstanding under the assessment as determined in such objection shall be payable within thirty days after the date of service on the person assessed of the notification of the tax payable.

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

Time within which payment is to be made.

(2) The Commissioner may where good cause is shown extend the period within which such tax or provisional tax shall be paid under the provisions of subsection (1) of this section to such period as he may deem fit.

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Suit for
recovery
of tax.

25. (1) Subject to the provisions of sections 19, 20 and 21 of this Law, tax or provisional tax may be sued for and recovered in any court of competent jurisdiction by the Commissioner in his official name with full costs of suit from the person charged therewith as a debt due to the Government of Ghana:

Provided that any suit for tax payable and recoverable under this Law shall not be commenced later than 12 years from the date such tax is due.

(2) In any suit under subsection (1) of this section the production of an extract from the assessment record verified under the hand of the Commissioner giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence of the amount so due and sufficient authority for the Court to give judgment for the said amount.

Repayment
of tax.

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

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

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

PART VIII—SUB-CONTRACTORS AND EXPATRIATE EMPLOYEES

Withholding
tax on
amounts
due to sub-
contractors.

27. (1) Where under the terms of a contract any amount due to a sub-contractor in respect of work or services for or in connection with a Petroleum Agreement the person liable under that contract to make payment to the sub-contractor shall withhold from the aggregate amount due to the sub-contractor such percentage of the aggregate amount due as may be specified in the Petroleum Agreement and the amount so withheld shall be paid to the Commissioner and payment thereof shall have the effect provided for in subsection (2) of this section:

Provided that this requirement may be waived by the express terms of the Petroleum Agreement where the sub-contractor is an affiliate of the contractor whose services are charged to the contractor at cost.

(2) When an amount has been withheld from an aggregate amount due to a sub-contractor pursuant to subsection (1) of this section the sub-contractor shall not in respect of that aggregate amount be liable for tax under the provisions of any other law in force in Ghana.

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(3) Nothing in section 55 (7) of the Income Tax Decree, 1975 (S.M.C.D. 5) shall apply to a contract for the supply of goods or the provision of work or services for or in connection with petroleum operations.

(4) Nothing in section 2 (1) of the Income Tax Decree, 1975 (S.M.C.D. 5) shall apply to the calculation of the gains and profits of a person who is a non-resident sub-contractor by reason only of the provision by such non-resident sub-contractor of work or services for or in connection with a Petroleum Agreement.

28. Unless, and to the extent that, a Petroleum Agreement provides in respect of any expatriate employee employed by a contractor or a sub-contractor carrying on exclusively petroleum operations the gains or profits of such employee shall be liable to income tax and the withholding of tax under the laws of Ghana.

PART IX—ADMINISTRATION

29. (1) This Law shall be administered by the Commissioner, who shall be responsible for the assessment and collection of the tax chargeable under the provisions of this Law and the payment of such tax into the account of the Internal Revenue Service designated for such purposes.

(2) The Commissioner may in writing, or by notice in the *Gazette*, authorise any person to perform, or to assist in the performance of, any duty imposed upon the Commissioner by this Law.

(3) Every person having any official duty in the administration of this Law, or being employed for the purpose of the administration of this Law or being authorised under the provisions of this section shall act in accordance with the lawful instructions of the Commissioner.

30. (1) Every person having any official duty in the administration of this Law, and having possession of, or control over any documents, accounts or information relating to petroleum operations and the amount and value of petroleum produced and saved by any person, who at any time communicates such information or anything contained in such documents or accounts to any person, other than a person to whom he is authorised by law to communicate it to, for the purpose of this Law or the Income Tax Decree, 1975 (S.M.C.D. 5), shall be guilty of an offence, and liable on summary conviction to a fine not exceeding C\$50,000.00 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Any proceedings for an offence against this section may be taken by the Commissioner but not by any other person except with the consent of the Attorney-General.

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

(4) Any person who by reason of the provisions of this Law has possession of or control over any documents, accounts or information relating to petroleum operations and the amount and value of petroleum produced and saved by any person shall, for the purpose of subsection (1), be deemed to have an official duty in the administration of this Law.

Service of
notice.

31. (1) A notice may be served on a person:

- (a) personally; or
- (b) by being left at his usual or last known place of abode; or
- (c) by being sent through registered post, addressed to such person at his usual or last known business or private address including any post office box number or private post bag; or
- (d) in the case of a company incorporated or registered in Ghana addressed to the manager of the company, or any principal officer thereof in Ghana at the registered office of the company or at the principal place of business in Ghana of such company; or
- (e) in the case of a partnership by being sent through the post to the usual or last known business or private address of a partner resident in Ghana or if there is no such partner, to the usual or last known business or private address of the Manager of the partnership business addressed to such partner or Manager; or
- (f) in the case of a body of persons, addressed to such body at the last known business or other address of such body.

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

(3) Every notice to be given by the Commissioner under this Law shall be signed by the Commissioner or by such person as may from time to time be authorised by him for that purpose under the provisions of section 29 (2) of this Law and every notice shall be valid if the signature of the Commissioner or of such person is duly printed or written thereon.

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PART X—OFFENCES AND PENALTIES

32. Any person who without reasonable excuse fails to comply with the requirements of a notice or summons served upon him under and in accordance with the provisions of this Law, within the time prescribed, shall be guilty of an offence, and shall be liable on summary conviction to a fine of not less than ₦100,000.00 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and, in the case of failure to comply with a notice requiring tax or provisional tax to be paid, shall in addition incur a penalty of a sum equal to fifteen per cent of the tax payable.

Failure to
comply
with notice
or summons.

33. (1) Any person who without reasonable excuse:

- (a) fails to make a return or statement in accordance with the provisions of this Law; or
- (b) makes an incorrect return or statement which he is required by this Law to make; or
- (c) gives any incorrect information in relation to any matter or thing affecting his own liability, or the liability of any other person, to tax or provisional tax;

Failure to
make returns
and falsifica-
tion of
returns.

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

(2) Where such person is a body corporate then every director and officer of that body shall be deemed guilty of the offence and on summary conviction shall be liable to the penalty provided for in subsection (1) of this section:

Provided that no such director or officer shall be held guilty of the offence if he proves that such offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence:

Provided further that no person shall be liable to the penalty provided under the provisions of this section unless proceedings for the recovery of the penalty were commenced within six years after the act or omission to which the penalty relates.

34. (1) Any person, who for the purpose of obtaining any reduction in tax, or provisional tax, for himself or any other person knowingly and wilfully misrepresents any fact relevant to the ascertainment of such tax shall be guilty of an offence and shall be liable

Misrepre-
sentation to
obtain tax
reduction.

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on summary conviction to a fine not exceeding ten million cedis or to imprisonment for a term not exceeding four years or to both such fine and imprisonment.

(2) Where such person is a body corporate then every director and officer of that body shall be deemed guilty of the offence and liable to the penalty provided for in subsection (1) of this section:

Provided that no such director or officer shall be deemed to be guilty of the offence, if he proves that such offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence.

Recovery
of penalties.

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

(2) Proceedings for the recovery of any pecuniary penalty incurred under the provisions of sections 32 and 33 of this Law shall not relieve any person from liability to criminal proceedings in respect of the commission of any offence against the provisions of this Law.

(3) Penalties under the provisions of this Law received by the Commissioner shall be paid into the account of the Income Tax Authority designated for such purposes.

Tax to be
payable
notwith-
standing
any proceed-
ings for
penalties or
offences.

36. The institution of proceedings against offenders under this Law shall not relieve any persons from their liability to pay any tax or provisional tax for which he is or may become liable.

PART XI—MISCELLANEOUS

Power to
make regu-
lations and
prescribe
forms.

37. (1) The Secretary may make regulations generally for the better carrying out of the provisions of this Law.

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

Interpreta-
tion.

38. (1) A word and phrase to which a meaning has been attributed in the Petroleum (Exploration and Production) Law, 1984 (P.N.D.C.L. 84) shall unless the context otherwise requires be given the same meaning when used in this Law.

(2) In this Law unless the context otherwise requires:

“affiliate” means any company which holds not less than five per cent of the share capital or voting rights in a company carrying on petroleum operations and shall

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include any company which controls, is controlled by, or is under common control with, any person carrying on petroleum operations;

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

“chargeable income” means income ascertained as chargeable with tax for any year of assessment in accordance with this Law;

“Commissioner” has the same meaning as in the Income Tax Decree, 1975 (S.M.C.D. 5);

“company” means any person, firm, body corporate registered or incorporated in Ghana under the provisions of the Companies Code, 1963 (Act 179);

“corporation” means the Ghana National Petroleum Corporation established by the Ghana National Petroleum Corporation Law, 1985 (P.N.D.C.L 64);

“contractor” means any person which is a party to a Petroleum Agreement with the Republic and the Corporation made pursuant to section 5 (4) of the Petroleum (Exploration and Production) Law, 1984 (P.N.D.C. L. 84);

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

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

“Ghana” means the territory of the Republic of Ghana and includes the sea, seabed, subsoil, the continental shelf and all other areas within the jurisdiction of the Republic of Ghana;

“gross income” means in the case of a person carrying on petroleum operations, the income derived by such person from the sale or export without sale of all petroleum to which that person is entitled under a Petroleum Agreement and income incidental thereto

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before making of the deductions for which provision is made in this Law for the purpose of calculating chargeable income:

Provided however that gross income does not include—

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

“loss” means in relation to any year of assessment from and after the year of commencement, the amount by which deductions allowable under section 3 of this Law exceeds gross income;

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

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

- (i) sums expended in the acquisition of an interest or a participating interest in a Petroleum Agreement but not including any such expenditure incurred after the year of commencement in or on an acquisition from a person who is carrying on production of petroleum under a programme of continuous production and sale; and
- (ii) expenditure including, where applicable, intangible costs incurred on:
 - (a) geological, geophysical, geochemical, aerial, magnetic, gravity, seismic and other surveys and all processing, analyses, interpretations and studies related thereto;
 - (b) drilling of shot holes, core holes, bore holes, water holes and holes for the discovery and delineation of petroleum reservoirs;
 - (c) preparing for drilling, drilling, and maintaining exploration, appraisal, development and production wells whether such wells are producing or not, including all

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costs of labour, fuel, repairs, haulage and supplies, and materials without salvage value, incurred in:

- (i) drilling, shooting and cleaning wells;
 - (ii) clearing and draining ground, road making, surveying and other preparations for drilling;
 - (iii) constructing and erecting drilling rigs, drilling and production platforms, tanks, pipelines;
- (d) acquisition of petroleum information and the costs of all reservoir studies;
 - (e) the provision of plant, machinery and equipment including construction and erection of drilling rigs, drilling and production platforms and other plant, machinery, and equipment necessary for the exploration for, and the development and production of petroleum;
 - (f) the construction of any building, structures or works including the provision of residential accommodation and associated facilities for employees;
 - (g) the provision of any transportation or communication facilities required for the conduct of petroleum operations;
 - (h) the provision of office equipment and furniture;
 - (i) the preparation of sites for production, including engineering and design studies, delineation work and feasibility studies done to determine the best means of operation;
 - (j) any sums payable by way of reimbursement of costs and premium thereon to any party for the conduct of sole risk operations pursuant to the terms of a Petroleum Agreement;
- (iii) expenditure incurred prior to the year of commencement in or on:
 - (a) general administration and management directly connected with petroleum operations;

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- (b) subject to the limitation set forth in the proviso to section 3 (1) (c) any interest paid in respect of any loan for the time being utilised to finance petroleum operations;
 - (c) the education and training of citizens or nationals of Ghana at approved educational or technical institutions and including attachment with a contractor in any aspect of petroleum operations, and the provision of educational and scientific materials and equipment pursuant to the terms of a Petroleum Agreement;
 - (d) rentals; and
 - (e) any other such expenditure which if incurred in or after the year of commencement would be deductible under section 3;
- (iv) where applicable, expenditures incurred by a contractor on behalf of the Corporation in respect of a carried interest within the meaning and pursuant to the terms of a Petroleum Agreement to the extent that the same have not been included within any other category of expenditure referred to in this definition of petroleum capital expenditure.

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

“petroleum operations” means exploration, development or production operations including operations for the sale, or export without sale of petroleum, being operations carried by a contractor;

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

“rentals” means sums payable as rental charges in respect of the surface area to which a Petroleum Agreement relates and which, in accordance with section 18 of the Petroleum (Exploration and Production) Law, 1984 (P.N.D.C.L. 84), have been prescribed or, as the case

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may be, are otherwise provided for under the terms of a Petroleum Agreement;

“resident in Ghana” has the same meaning as in section 76 of the Income Tax Decree, 1975 (S.M.C.D. 5);

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

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

“Secretary” means the P.N.D.C. Secretary responsible for Revenue;

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

“sub-contractor” means any person who enters into a contract with a contractor for the provision of work or services (including rental of plant and equipment) in Ghana for or in connection with the Petroleum Agreement to which such contractor is a party and where a Petroleum Agreement so provides includes any “non-resident person” or “non-resident company” (as those terms are defined in the Income Tax Decree, 1975 (S.M.C.D. 5) who under the terms of a contract provides such work or services;

“year of assessment” has the same meaning as in the Income Tax Decree, 1975 (S.M.C.D. 5);

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

39. (1) Petroleum Income Tax Law, 1986 (P.N.D.C.L. 185) is hereby repealed.

(2) The provisions contained in the Third Schedule to the Income Tax Decree, 1975 (S.M.C.D. 5) shall not apply to petroleum operations.

Repeal and
disapplica-
tion of
other tax
legislation.

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(3) There shall be no tax charged, or withholding of tax required, under the provisions of the Income Tax Decree, 1975 (S.M.C.D. 5) in respect of any income, or dividends paid out of any income which is taken into account in ascertaining chargeable income or loss under the provisions of this Law, or which is excluded from gross income hereunder.

(4) Nothing in the Additional Profits Tax Law, 1985 (P.N.D.C.L. 122) or the Capital Gains Tax Decree, 1975 (N.R.C.D. 347) shall apply to petroleum operations hereunder.

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

Penalties
and fines
to be paid
in currency
in which tax
is payable.

40. All penalties and fines provided for in this Law shall be paid in the currency in which payments of tax are to be made under the terms of the applicable Petroleum Agreement.

Exemption.

41. Where he deems fit the Secretary may by legislative instrument exempt a contractor from the operation of any general law or provisions thereof relating to taxation other than this Law.

*PETROLEUM INCOME TAX LAW, 1987**SCHEDULE*

(SECTION 3)

CAPITAL ALLOWANCES

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Capital allowances to be deducted in ascertaining chargeable income.
2. Capital allowance for the year of commencement
3. Annual capital allowance
4. Calculation of annual deductions
5. Netting of expenditures for capital allowance for year of commencement.
6. Sale of assets after year of commencement
7. Assignment of interest after year of commencement
8. Exclusion of other capital chargeable
9. Apportionment
10. Part of an asset

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Capital allowances to be deducted in ascertaining chargeable income.

1. In ascertaining for any year of assessment the chargeable income of any person carrying on petroleum operations there shall be deducted from his gross income in the year of commencement and in subsequent years of assessment capital allowances calculated as hereinafter provided.

Capital allowance for the year of commencement.

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

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

Annual capital allowance.

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

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

Calculations of annual deductions after year of commencement.

4. The capital allowance for any year of assessment after the year of commencement shall be the sum of:

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

Netting of expenditures for capital allowance for year of commencement.

5. For the purpose of calculating the capital allowance for the year of commencement pursuant to paragraph 4 (ii) (a) petroleum capital expenditure incurred in the year of commencement and in previous years shall be net expenditure after deducting:

- (a) as consideration in respect of the acquisition by any other person of an interest or proportionate part

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

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

Sale of assets after year of commencement.

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

(3) Nothing in this paragraph shall apply to the assignment of an interest in a Petroleum Agreement or any proportionate part thereof or to any other asset assigned therewith.

7. Where in any year of assessment after the year of commencement, a person carrying on petroleum operations has assigned his interest in a Petroleum Agreement or a proportionate part thereof and his interest in assets held in connection therewith or a proportionate part thereof—

Assignment of interest after the year of commencement.

- (a) the capital allowances to which the assignor would otherwise have been entitled in respect of petroleum

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capital expenditure and incurred before the assignment will be reduced for that year and subsequent years for as long as such allowances subsist by a proportion corresponding to the proportion of the interest of the assignor in the Petroleum Agreement which has been so assigned;

- (b) the capital allowances to which the assignee would otherwise have been entitled in respect of petroleum capital expenditure incurred by the assignee in that year and subsequent years will be increased by an amount equal to the amount by which the capital allowances of the assignor for that year and any subsequent year has been reduced, pursuant to subparagraph (a).

Exclusion
of other
capital
chargeable.

8. Where a deduction is made under this Schedule in respect of any petroleum capital expenditure in computing the income of a person carrying on petroleum operations in respect of any year of assessment, then to the extent to which such a deduction has been made, no further deduction shall be made under any other provision of this Law in respect of the same petroleum capital expenditure in ascertaining the chargeable income of such person in respect of the same or any previous or subsequent year of assessment.

Apportion-
ment.

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

Part of an
asset.

10. 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 interest therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Commissioner, be just and reasonable.

Made this 20th day of May 1987.

FLT.-LT. JERRY JOHN RAWLINGS
Chairman of the Provisional National Defence Council

Date of Gazette notification: 4th September, 1987.

