

PETROLEUM INDUSTRY FISCAL FRAMEWORK BILL, 2016

ARRANGEMENT OF SECTIONS

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TABLE I

# A BILL

## FOR

AN ACT TO ESTABLISH A FISCAL FRAMEWORK THAT ENCOURAGES FURTHER INVESTMENT IN THE PETROLEUM INDUSTRY WHILST INCREASING ACCRUABLE REVENUES TO THE FEDERAL GOVERNMENT OF NIGERIA

*Sponsored by Hon. Victor O. Nwokolo*

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

### PART 1: OBJECTIVES

1. The objective of this Act is to:

Objective

(a) establish a progressive fiscal framework that encourages further investment in the petroleum industry whilst increasing accruable revenues to the Federal Government of Nigeria;

(b) establish a forward looking fiscal framework that is based on core principles of clarity, dynamism, neutrality, open access and general application;

(c) provide clear distinction between legislative aspects of the fiscal regime and negotiable aspect of contractual obligation

### PART 2: GENERAL MATTERS

2. -(1)The determination and collection of the various government revenue sources, shall be the function of the following entities:

Responsibilities of Institutions

(a)Part3 of this Act (Companies Income Tax) - the Service;

(b) Part4 of this Act (Rents and Royalties) - the Commission;

(c) Part5 of this Act (Nigerian Hydrocarbon Tax) - the Service;

(d) Part 6 of this Act (production sharing contracts and other contracts of the National Petroleum Company) - the National Petroleum Company;

(e) Part7 of this Act (Miscellaneous) - the Service.

1 (2) In consequence of the assignment of the various functions under  
 2 subsection (1) of this section hereof and responsibilities for collecting other  
 3 levies and fees applicable in other articles in this Act, the First Schedule of the  
 4 Federal Inland Revenue Service (Establishment) Act, 2007 shall hereby be  
 5 amended by deleting paragraph 11.

6 (3) The Service shall be entitled to carry out such audits and  
 7 inspections as it deems necessary with respect to government revenue sources  
 8 under Part 4 and 5 of this Act and other fees and levies pursuant to this Act in  
 9 order to ensure the proper oversight over the collection from these revenues  
 10 sources.

11 (4) The Commission and National Oil Company shall provide such  
 12 assistance to the Service as required during such audits and inspections.

Adjustment factors

13 3.-(1) Certain amounts expressed in US dollars in this Act, where such  
 14 adjustment is indicated, shall be adjusted on April 1 of each calendar year by  
 15 the Commission with an adjustment factor as follows:

16 
$$\text{CPI}(y-1)$$
  
 17 
$$\text{Adjustment Factor} = \frac{\text{CPI}(y-1)}{\text{CPI}(2009)}$$
  
 18 
$$\text{CPI}(2009)$$

19 In which:

20 "CPI (y-1)" means the average United States Consumer Price Index  
 21 (Annual) for All Urban Consumers (CPI-U) for the U.S. City Average for All  
 22 Items, 1982-84=100, unadjusted for seasonal variation, as announced by the  
 23 United States Department of Labor Bureau of Labor Statistics, for the calendar  
 24 year prior to the April 1 date under consideration; and

25 "CPI (2009)" means the average United States Consumer Price Index  
 26 (Annual) for All Urban Consumers (CPI-U) for the U.S. City Average for All  
 27 Items, 1982-84=100, unadjusted for seasonal variation, as announced by the  
 28 United States Department of Labour Bureau of Labour Statistics, for the  
 29 calendar year 2009.

30 (2) Where the statistical information for the CPI (y-1) is no longer

1 available the Minister may by regulation replace this index with another  
2 published similar index used by the United States of America.

3 4.-(1) Following the effective date, the Minister may, upon  
4 recommendation of the Commission, issue regulation to provide fiscal  
5 incentives for the exploration and production of bitumen and/or heavy oil  
6 (meaning crude oil having a API gravity below 18° at standard temperature  
7 and pressure) that will incentivise such explorers and producers to explore  
8 and invest in Nigeria while benefiting all Nigerians.

Special Products

9 (2) Any fiscal incentive to be provided by the Minister under sub-  
10 section 1 of this section shall be subject to the prior review of the Federal  
11 Ministries of Finance and Budget and Planning, having particular regard to  
12 the sustainability of the proposed incentives.

13 5. -(1)The Minister may, upon the recommendation of the  
14 Commission and the prior review of the Federal Ministries of Finance and  
15 Budget and National Planning, issue regulations addressing the fiscal  
16 provisions for petroleum derived from frontier acreage areas.

Fiscal provisions  
for frontier acreage  
and ultra-deep  
water

17 (2)Notwithstanding the provisions within this Act, the Minister  
18 may, upon the recommendation of the Commission, and the prior review of  
19 the Federal Ministries of Finance and Budget and National Planning issue  
20 regulations addressing the fiscal provisions for petroleum derived from  
21 ultra-deep water areas.

### 22 PART 3: COMPANIES INCOME TAX

23 6. The Companies Income Tax Act, Cap C21, Laws of the  
24 Federation of Nigeria 2004 shall be amended by inserting a new section 39A  
25 as follows:

General  
requirement to  
pay corporate  
income tax

26 39A. Companies income tax applicable to operations related to  
27 petroleum.

28 (1) All companies, concessionaires, licensees, lessees, contractors  
29 and subcontractors involved in petroleum operations under the Petroleum  
30 Industry Act shall be subject to tax pursuant under this Companies Income

1 Tax Act, Cap C21, Laws of the Federation of Nigeria 2004.

2 (2) Notwithstanding section 27 of the Companies Income Tax Act,  
3 Cap C21, Laws of the Federation of Nigeria 2004, all companies engaged in  
4 upstream petroleum operations and downstream petroleum operations shall  
5 determine the tax pursuant to this Act separately for:

6 (a) upstream petroleum operations under the Petroleum Industry Act  
7 ("Upstream Petroleum"); and

8 (b) downstream petroleum operations under the Petroleum Industry  
9 Act.

10 (3) In determining the companies income tax, the Nigerian  
11 Hydrocarbon Tax under this Act shall not be deductible. In determining the  
12 companies income tax, the allowances under section 339 of the Petroleum  
13 Industry Act shall be deductible.

14 (4) All companies engaged in upstream gas operations and  
15 downstream gas distribution and utilization operations under the Petroleum  
16 Industry Act shall be entitled to benefit from the incentives provided under  
17 Section 39 of the Companies Income Tax Act, Cap C21, Laws of the Federation  
18 of Nigeria 2004.

19 (5) All companies engaged in export gas operations with respect to  
20 LNG under the Act, shall be entitled to benefit from the incentives provided  
21 under Section 39 Companies Income Tax Act, Cap C21, Laws of the Federation  
22 of Nigeria 2004.

23 (6) Section 39 (1) of the Companies Income Tax Act, Cap C21, Laws  
24 of the Federation of Nigeria 2004 shall be amended by replacing the words "gas  
25 utilization (downstream)" with "operations pursuant to Section 39A(4) of the  
26 Companies Income Tax Act."

27 (7) Section 39(3) of the Companies Income Tax Act shall be amended  
28 by deleting the definition of "gas utilization".

29 (8) The Second Schedule of the Companies Income Tax Act shall be  
30 amended by inserting below the word "Mining Expenditure" in Table I and II



1 with respect to Initial and Annual Allowance, the word "Upstream  
2 Petroleum Operations", with an initial allowance of "Nil" and annual  
3 allowances of 20%. There shall be retention of 1 % in the last year until the  
4 asset is disposed.

5 (9) The second schedule of the Companies Income Tax Act Cap  
6 C21, Laws of the Federation of Nigeria 2004 shall be amended by adding the  
7 definition of Upstream Petroleum as follows:

8 "Upstream Petroleum" means upstream petroleum operations as  
9 defined in the Petroleum Industry Act.

10 (10) Section 24 of the Companies Income Tax Act Cap C21, Laws  
11 of the Federation of Nigeria 2004 shall be amended by re-numbering (j) into  
12 (k) and by inserting a new paragraph (j) as follows:

13 "(j) any rents and royalties payable on upstream petroleum  
14 operations"

15 (11) Any company pursuant to subsection 2(a) of this section  
16 hereof shall use Nigerian Hydrocarbon Tax accounting periods on an actual  
17 year basis for the Companies Income Tax and shall apply the procedures for  
18 paying tax estimates under the Nigerian Hydrocarbon Tax to Companies  
19 Income Tax. Total profit shall be determined in accordance with the  
20 Companies Income Tax Act.

21 (12) Any company pursuant to subsection 2(a) of this section  
22 hereof shall pay estimates of the Companies Income Tax Act on a monthly  
23 basis in anticipation of the full tax due at the end of the accounting period.

24 (13) The Second Schedule of the Companies Income Tax Act shall  
25 be amended by inserting a paragraph 7(3) stating the following:

26 "Where a licensee or lessee has entered into a contract pursuant to  
27 section 154 of the Petroleum Industry Act, and such contract provides for the  
28 transfer of assets to such licensee or lessee by the contractor, such transfer  
29 shall be valued as equal to the value of cost oil, cost gas or cost condensates  
30 paid for such assets ("the deemed income") and capital cost allowances can

1 be claimed against such deemed income in the hands of the licensee or lessee.  
2 The contractor parties shall be entitled to deduct the expenditures for the  
3 creation of assets to be owned by a licensee of petroleum prospecting licence or  
4 lessee of a petroleum mining lease.”

5 (14) Deductions not allowed under section 27(g), 27(h) and 27(i) of  
6 the Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria  
7 2004, will not apply to companies engaged in upstream petroleum operations.

#### 8 PART 4: RENTS AND ROYALTIES

Rents for licences  
and leases

9 7.-(1) Every petroleum exploration licence shall be subject to a rent of  
10 US dollars 10 per square kilometer included in the PEL upon the grant of the  
11 PEL and any anniversary thereof.

12 (2) Every petroleum prospecting licence shall be subject to a rent of:

13 (a) US \$ 300 per square kilometer upon the grant of the PPL and from  
14 the first to the fourth anniversary thereof;

15 (b) US \$ 500 per square kilometer on the fifth anniversary and any  
16 further anniversaries of the PPL;

17 (c) During any significant gas discovery retention period the rent shall  
18 be US \$ 10,000 per square kilometer per annum and shall be paid on the  
19 declaration of a significant gas discovery and any anniversary thereof.

20 (3) Every petroleum mining licence shall be subject to a rent of US \$  
21 1,000 per square kilometer upon the grant of the PML and any anniversary  
22 thereof.

23 (4) A PEL, PPL or PML cannot be granted without prior payment of  
24 the applicable rent for the first year.

25 (5) Failure to pay the rent before the respective year-end of the PEL,  
26 PPL or PML shall result in the application of an interest rate of LIBOR plus 2%  
27 to the outstanding payment in US \$ and where the payment of the applicable  
28 rent is not made within three months, termination of such licence pursuant to  
29 section [.] of the Petroleum Industry Act shall be initiated.

30 (6) The rents shall be adjusted pursuant to section 3.

1 (7) Any rents shall be verified and collected by the Commission.

2 (8) The Commission shall cause a sum equal to [.]% of all royalty  
3 received monthly to be paid into the [.] for the benefit of the local  
4 government(s) of derivation in proportion. Provided that where a license or  
5 lease covers one or more local governments, the royalties from production  
6 payable to the communities shall be divided into equal parts and given to  
7 each local government of derivation.

8 8.-(1) All production of petroleum, including production tests in  
9 petroleum prospecting licences and petroleum mining leases, shall be  
10 subject to royalties.

All petroleum  
production subject  
to royalties

11 (2) The production and value of the petroleum for the purpose of  
12 determining the royalties shall be determined at the fiscal sales point(s)  
13 which shall be approved by the Commission in consultation with the  
14 operator. The production and value shall be determined monthly on the basis  
15 of the average daily production and value of petroleum as provided for in  
16 this Part 4.

17 (3) The production shall be measured at standardised temperatures  
18 and pressures as defined from time to time by regulation and production  
19 shall not include:

20 (a) any volumes burned, flared or vented with the approval of the  
21 Commission;

22 (b) any volumes re-injected by the lessee into reservoirs for the  
23 purpose of improving or enhancing production of crude oil or for  
24 conservation of natural gas;

25 (c) any volumes used in the upstream crude oil operations or  
26 upstream gas operations for the production of electricity or heat for  
27 exclusive use in the operations of the PML; and

28 (d) any water or sediments.

29 (4) The value for the purpose of royalty calculation for crude oil  
30 and condensates shall be determined by the Commission and based on the

1 official selling price at the fiscal sales point and shall be adjusted taking into  
2 consideration:

3 (a) any quality differentials; and

4 (b) any transportation costs that apply within Nigeria as determined  
5 by the Commission.

6 (5) The average official selling price applicable to any calendar month  
7 for crude oil and condensates produced from any PML shall be determined by  
8 the Commission on the basis of information from non- confidential  
9 independent publications making such adjustments for quality and transport  
10 costs as appropriate to prices of comparable crude oils and condensates sold in  
11 the international market, as determined by the Commission, for which  
12 appropriate information is available.

13 (6) The value for the purpose of royalty calculation for natural gas  
14 shall be determined by the Commission and shall be based on the value at the  
15 fiscal sales point as follows:

16 (a) based on the composition of the natural gas at the fiscal sales point,  
17 based on a reasonable estimate of the content of marketable natural gas, ethane,  
18 propane, butanes and natural gas liquids as will be typically derived by  
19 processing of the natural gas;

20 (b) for export markets, it shall be determined by reference to the  
21 relevant gas sales agreement in place;

22 (c) for domestic markets, shall be determined:

23 (i) initially on the gas pricing framework determined by the Minister  
24 based on the National Gas Master Plan;

25 (ii) and where the appropriate Institution determines that competitive  
26 markets exists in Nigeria, it shall be based on the relevant gas sales agreement  
27 in place.

Royalties payable  
in cash

28 9.-(1) For the purposes of payment of royalties, the royalties for crude  
29 oil, condensates and natural gas shall be paid in cash. Provided that if any  
30 royalty is paid or payable in kind, the burden of storage, insurance and other

1 ancillary and administrative costs shall be borne by the licensee or lessee on  
2 a non-deductible basis.

3 (2) The amount of royalty payable shall be based on the values  
4 established pursuant to section 8 and shall be determined separately for:

5 (a) crude oil plus condensates; and

6 (b) natural gas.

7 (3) Any royalty payable shall be paid in cash on a monthly basis in  
8 the month following the month for which the royalty was determined, and  
9 where such royalty is not paid in the respective month an interest of LIBOR  
10 plus 2% shall be applied to the outstanding payment, and where a royalty  
11 payment is not made within three months after the month in which the  
12 royalty is due, termination of such lease pursuant to section [.] of the  
13 Petroleum Industry Act shall be initiated.

14 (4) Any royalties shall be determined and collected by the  
15 Commission.

16 10.-(1) The total royalty rate for each PML shall be the royalty rate  
17 pursuant to section 11 hereof plus the royalty rate pursuant to section 12.

Total royalty rates

18 11.-(1) All holders of petroleum prospecting licences or petroleum  
19 mining leases under this Act shall pay to the Commission, within thirty days  
20 upon the last day of every month (including the month in which his licence  
21 or lease becomes effective), or otherwise as the Commission may direct:

Royalty rates based on location and production

22 (a) For crude oil and condensates, a royalty at a rate per centum of  
23 the value (the value calculated in accordance with section 7) as follows:

- 24 (i) in onshore areas.....22%
- 25 (ii) in areas up to 100 metres water depth .....20%
- 26 (iii) in areas from 101 to 200 metres water depth.....8.5%
- 27 (iv) in areas from 201 to 500 metres water depth.....15%
- 28 (v) in areas from 501 to 800 metres water depth ..... 12%
- 29 (vi) in areas from 801 to 1000 metre water depth .....10%
- 30 (vii) in areas beyond 1000metres water depth.....8%

1 (b) Notwithstanding the provisions of subsection (1) (a) of this  
 2 section, for an indigenous petroleum company, for crude oil and condensates, a  
 3 royalty at a rate per centum of the value (the value calculated in accordance  
 4 with section 320) as follows:

5 (i) In on shore areas, 2.5% of the production up to and including 2,000  
 6 barrels per day, 12.5% of the production over 2,000 barrels per day up to and  
 7 including 5,000 barrels per day and 22% of the production over 5,000 barrels  
 8 per day;

9 (ii) in shallow water areas, 2.5% of the production up to and including  
 10 5,000 barrels per day, 12.5% of the production over 5,000 barrels per day up to  
 11 and including 20,000 barrels per day and 18.5% of the production over 20,000  
 12 barrels per day;

13 (iii) in deepwater areas, 2.5% of the production up to and including  
 14 7,500 barrels per day, 5% of the production over 7,500 barrels per day up to and  
 15 including 20,000 barrels per day and 8% of the production over 20,000 barrels  
 16 per day.

17 (c) Notwithstanding the provisions of subsection (1) (a) of this  
 18 section, for an upstream petroleum company producing an aggregate volume  
 19 of not less than one-hundred thousand barrels of oil and condensate per day in  
 20 the deepwater area, for crude oil and condensates the royalty shall be at a rate  
 21 per centum of the higher of 12% and the applicable rate in subsection ( ) (a) of  
 22 this section of the value (the value calculated in accordance with section 320).

23 (d) For natural gas, a royalty at a rate per centum of the value (the  
 24 value calculated in accordance with section 320) as follows:

25 (i) for onshore and in areas up to 200 metres water depth .....7.5%

26 (ii) in areas beyond 200 metres water depth .....5%

27 (e) Provided that in respect of all new gas production commenced  
 28 from the effective date, the above stated royalty rate shall be 0% for the first  
 29 three years of such production and the above rates shall only be applied from  
 30 the beginning of the fourth year.

1 (2) Where a PML produces petroleum partly from areas as defined  
2 under subsection (1 (a) of this section, the weighted average royalty shall be  
3 calculated in the following manner:

4 (a) by determining the total production of the PML from both  
5 water depth areas;

6 (b) by determining the production on either side of the water depth  
7 boundary based on the location of the well intersections with the producing  
8 reservoirs; and

9 (c) the weighted average royalty rate will be based on the volumes  
10 determined under paragraph (b) multiplied by the relevant royalty rate in  
11 relation to the total volume determined under (a).

12 12.-(1)The royalty rates based on value shall be applicable to crude  
13 oil and condensates produced from production sharing contract areas and  
14 shall be based on the average value for the month from each PML for the  
15 petroleum production as determined pursuant to section 320 hereof and  
16 shall be determined as follows:

Royalty rates  
based on value

17 (a) 0% for a value from US \$ 0 per barrel and up to and including  
18 US \$ 70 per barrel;

19 (b) over US \$ 70 per barrel and up to and including US \$ 110 per  
20 barrel the royalty rate shall increase by 0.1 % royalty percentage for every  
21 US \$ 1 increase in value over US \$ 70 per barrel;

22 (c) over US \$ 110 and up to and including US \$ 150 per barrel the  
23 royalty rate shall be 4% plus 0.2% royalty percentage for every US \$ 1  
24 increase in value over US \$ 110 per barrel;

25 (d) over US \$ 150 and up to and including US \$ 170 per barrel the  
26 royalty rate shall be 12% plus 0.3% royalty percentage for every US \$ 1  
27 increase in value over US \$ 150 per barrel, and

28 (e) over US \$ 170 per barrel the royalty rate shall be 18%.

29 (2)The royalty rates for natural gas shall be:

30 (a) 0% for a value from US \$ 0 per million Btu up to and including

1 US \$ 2 per million Btu;

2 (b) over US \$ 2 per million Btu and up to and including US \$ 6 per  
3 million Btu, the royalty rate shall increase by 0.3% royalty percentage for  
4 every US \$ 0.10 per million Btu increase in value over US \$ 2 per million Btu;

5 (c) over US \$ 6 per million Btu and up to and including US \$ 10 per  
6 million Btu the royalty rate shall be 12% plus 0.2% royalty percentage increase  
7 for every US \$ 0.10 per million Btu increase in value over US \$ 6 per million  
8 Btu;

9 (d) over US \$ 10 per million Btu and up to and including US \$ 15 per  
10 million Btu the royalty rate shall be 20% plus 0.1 % royalty percentage increase  
11 for every US \$ 0.10 per million Btu increase in value over US \$ 10 per million  
12 Btu; and

13 (e) over US \$ 15 per million Btu the rate shall be 25%.

14 (3)The oil price levels and the US \$ 1 in subsection (1) of this section  
15 and the gas price levels and the US \$ 0.10 in subsection (2) of this section shall  
16 be adjusted pursuant to section 2 hereof.

17 PART 5: NIGERIAN HYDROCARBON TAX

Requirement to  
pay Nigerian  
Hydrocarbon  
Tax

18 13.-(1)There shall be levied upon the profits of each accounting  
19 period of any company engaged in upstream petroleum operations during that  
20 period, a tax to be known as the Nigerian Hydrocarbon Tax ("NHT") as  
21 provided for under section 17, such companies shall include:

22 (a) joint venture companies;

23 (b) the National Oil Company;

24 (c) holders of interests in petroleum prospecting licences;

25 (d) holders of interests in petroleum mining leases;

26 (e) marginal field operators;

27 (f) indigenous petroleum companies; and

28 (g) any contractor to a production sharing contract or service contract  
29 with anyone of the companies under paragraphs (a) to (f) of this section.



1                   14.-(1) The due administration of this Part 5 shall be in line with the      Powers and  
2                   FIRS Establishment Act and under the care and management of the Service      duties  
3                   who may do all such acts as may be deemed necessary and expedient for the  
4                   assessment and collection of the tax and shall account for all amounts so  
5                   collected in a manner to be prescribed by the Commission.

6                   15.-(1) Anything required to be done by the Service, in relation to      Signification and  
7                   the powers or duties specified in the First Schedule of this Act, may be      execution of  
8                   signified under the hand of the Executive Chairman of the Service, or of an      powers and duties  
9                   officer of the Service who has been authorised by the Service to signify from  
10                  time to time, anything done or to be done by the Service in respect of such  
11                  powers or duties.

12                  (2) Any authorisation given by the Service under or by virtue of  
13                  this Part 5 shall be signified under the hand of the Executive Chairman of the  
14                  Service unless such authority is notified in the Federal Gazette.

15                  (3) Subject to subsection (1) of this section, any notice or other  
16                  document to be given under this Act shall be valid if:

17                  (a) it is signed by the Executive Chairman of the Service or by any  
18                  person authorised by the Executive Chairman; or

19                  (b) such notice or document is printed and the official name of the  
20                  Service is duly printed or stamped thereon.

21                  (4) Every notice, authorisation or other document purporting to be  
22                  a notice, authorisation or other document duly given and signified, notified  
23                  or bearing the official name of the Service, in accordance with the provisions  
24                  of this section, shall be deemed to be so given and signified, notified or  
25                  otherwise without further proof, until the contrary is shown.

26                  (5) Every person having any official duty or being employed in the  
27                  administration of this Act shall regard and deal with all documents,  
28                  information, returns, assessment lists and copies of such lists relating to the  
29                  income, chargeable profits or items thereof of any company, as secret and  
30                  confidential.

1           (6) Every person having any official duty or being employed in the  
2 administration of this Act shall regard and deal with all documents,  
3 information, returns, assessment lists and copies of such lists relating to the  
4 income, chargeable profits or items thereof of any company, as secret and  
5 confidential.

6           (7) No person appointed under or employed in carrying out the  
7 provisions of this Act shall be required to produce in any court, any return,  
8 document or assessment, or to divulge or communicate to any court any matter  
9 or thing coming under his notice in the performance of his duties under this Act  
10 except as may be necessary for the purpose of carrying into effect the  
11 provisions of this Act, or in order to institute a prosecution, or in the course of a  
12 prosecution for any offence committed in relation to the provisions of this Act.

13           (8) Where under any law in force in any territory outside Nigeria  
14 provision is made for the allowance of relief from income tax and similar tax in  
15 respect of the payment of income tax and similar tax in Nigeria or for the  
16 exemption of income from income tax and similar taxes in respect of income  
17 subject to income tax and similar taxes in Nigeria, the obligation as to secrecy  
18 imposed by this section shall not prevent the disclosure to the authorised  
19 officers of the Government in that territory of such facts as may be necessary to  
20 enable the proper relief or exemption to be given in cases where relief or  
21 exemption is claimed from income tax and similar taxes in Nigeria or from  
22 income tax and similar taxes in that territory. For the purposes of this  
23 subsection, tax (as defined in this Act) shall be regarded as a tax similar to an  
24 income tax.

25           (9) Notwithstanding anything contained in this section, the Service  
26 may permit the Auditor-General of the Federation or any officer duly  
27 authorised in that behalf to have such access to any records or documents as  
28 may be necessary for the performance of his official duties, and the Auditor-  
29 General of the Federation or any such officer shall be deemed to be a person

1 employed in carrying out the provisions of this Act for the purposes of this  
2 section.

3 16.--(1) Where a notice is sent by registered post it shall be deemed  
4 to have been served on the next day succeeding the day on which the  
5 addressee of the registered letter containing the notice would have been  
6 informed in the ordinary course of events that such registered  
7 letter is awaiting him at a post office, if such notice is addressed in  
8 accordance with the provisions of subsection (3) of this section.

Service and  
signature of  
notices

9 (2) Notice shall not be deemed to have been served under this  
10 subsection if the addressee proves that no notification, informing him of the  
11 fact that the registered letter was awaiting him at a post office, was left at the  
12 address given on such registered letter.

13 (3) A notice to be served in accordance with subsection (1) of this  
14 section shall be addressed:

15 (a) in the case of a company incorporated in Nigeria, to the  
16 registered office of the company; and Cap C20 LFN, 2004;

17 (b) in the case of a company incorporated outside Nigeria, either:

18 (i) to the individual authorised to accept service of process under  
19 the Companies and Allied Matters Act, at the address filed with the  
20 Registrar-General; or

21 (ii) to the registered office of the company wherever it may be  
22 situated.

23 (4) Any notice to be given, sent or posted under this Chapter D may  
24 be served by being left at the appropriate office or address determined under  
25 subsection (3) of this section, unless such address is a registered post office  
26 box number.

27 17.--(1) There shall be charged a Nigerian Hydrocarbon Tax, which  
28 shall be a percentage pursuant to section 28(1) from its chargeable profit  
29 from its upstream petroleum operations.

Charge of tax

30 (2) Nigerian Hydrocarbon Tax shall be payable per company

1 except in respect of any contract area pursuant to section [.] of the Pet  
2 Industry Act hereof and any production sharing contract area in existenc  
3 to the effective date, wherein the tax shall be determined separately f  
4 contract area.

5 (3) With respect to contract areas pursuant to subsection (2)  
6 section, payment of the Nigerian Hydrocarbon Tax shall be collected  
7 and such payment shall be subject to the same notice periods and proced  
8 provided for royalties in section 9.

9 (4) No dividend withholding tax shall apply on any dividend declared  
10 by any company engaged in petroleum operations in so far as such profits have  
11 been subject to tax under the provisions of this Act or the Companies Income  
12 Tax Act Cap C21, Laws of the Federation of Nigeria 2004 as amended.

Ascertainment  
of profits

13 18.-(1) In relation to any accounting period, the income from  
14 upstream petroleum operations of that period of a company shall be taken to be  
15 the aggregate of:

16 (a) the value of all bitumen, crude oil and condensates spiked with  
17 crude oil shall be the official selling price multiplied by the volume of the  
18 fiscalised bitumen, crude oil and condensate of the company;

19 (b) the value of all natural gas shall be the sum of proceeds from the  
20 individual gas sales contracts;

21 (c) the value of all oil and gas under subsection (2) of section 70 that  
22 has been disposed of; and

23 (d) all incomes of the company from that accounting period incidental  
24 to and arising from one or more of its upstream petroleum operations.

25 (2) The adjusted profit of an accounting period shall be the profits of  
26 that period after the deductions allowed by subsection (1) of section 19.

27 (3) The assessable profit of an accounting period shall be the adjusted  
28 profit of that period after any deduction allowed under section 22.

29 (4) The chargeable profits of an accounting period shall be the

wells, 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;

(m) any expenditure, tangible or intangible directly incurred in connection with the drilling of an exploration well and the next two appraisal wells in the same field whether the wells are productive or not; provided that 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 to this Act;

(n) sums incurred by way of interest upon any money borrowed by such company, where the Service is satisfied that the interest was payable on capital employed in carrying on its upstream operations;

(o) all sums by way of interest upon any loans, including inter-company loans, or other debt obtained under terms prevailing in the open market, where the Service is satisfied that such sum was payable on capital employed in carrying on its upstream operations;

(p) such other deductions as may be prescribed by any regulation made under this 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 section 18(1)(d), be treated as income of the company of its accounting period in which such waiver or release was made or given.

20.-(1) Subject to the express provisions of section 15 and other provisions of this Part, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its upstream petroleum operations or upstream gas operations, no deduction shall be allowed in respect of:

Deduction not allowed

- 1 (a) any disbursement or expenses not being wholly and exclusively  
2 laid out or expended, or any liability not being a liability wholly or exclusively  
3 incurred, for the purpose of those operations;
- 4 (b) any capital withdrawn or any sum employed or intended to be  
5 employed as capital with the exception of any capital that may be employed  
6 with respect to an petroleum prospecting licence;
- 7 (c) any capital employed in improvement as distinct from repairs;
- 8 (d) any sum recoverable under any insurance or contract of  
9 indemnity;
- 10 (e) rent or cost of repair to any premises or part of any premises not  
11 incurred for the purpose of those operations;
- 12 (f) any amount incurred in respect of any income tax, profit tax, or  
13 similar tax whether charged within Nigeria or elsewhere;
- 14 (g) the depreciation of any premises, buildings, structures, work of a  
15 permanent nature, plant, machinery or fixtures;
- 16 (h) any payment to any provident, savings, widows, orphans or other  
17 society, scheme or fund;
- 18 (i) any customs duty on goods (including articles or any other thing)  
19 imported by the company for resale or for personal consumption of employees  
20 of the company;
- 21 (j) any expenditures related to petroleum exploration licences, except  
22 for the purchase of information from licensees of a petroleum exploration  
23 licences;
- 24 (k) any expenditure for the purpose of paying a penalty, including gas  
25 flaring penalty or penalties with respect to domestic gas supply obligations;
- 26 (l) any signature bonuses, production bonuses or other bonuses due  
27 on the renewal of a lease;
- 28 (m) all general, administrative and overhead expenses incurred  
29 outside Nigeria except where verified and approved by the Service in  
30 accordance with procedures established by the Service;

1           (n) twenty percent (20%) of any expenses, other than pursuant to  
2 paragraph (m), incurred outside Nigeria, except where such expenses relate  
3 to the procurement of goods and/or services which are not available  
4 domestically in the required quantity and quality subject to the approval the  
5 Nigerian Content Development and Monitoring Board;

6           (o) any costs attributable to downstream petroleum operations not  
7 covered by either an arm's length service or a purchase agreement except  
8 where verified and approved by the Service in accordance with procedures  
9 established by the Service;

10           (p) any legal and arbitration costs related to cases against the  
11 Service or the Government of Nigeria, unless specifically awarded to the  
12 company during the legal or arbitration process except where applied for by  
13 the company and is verified and approved by the Service in accordance with  
14 procedures established by the Service;

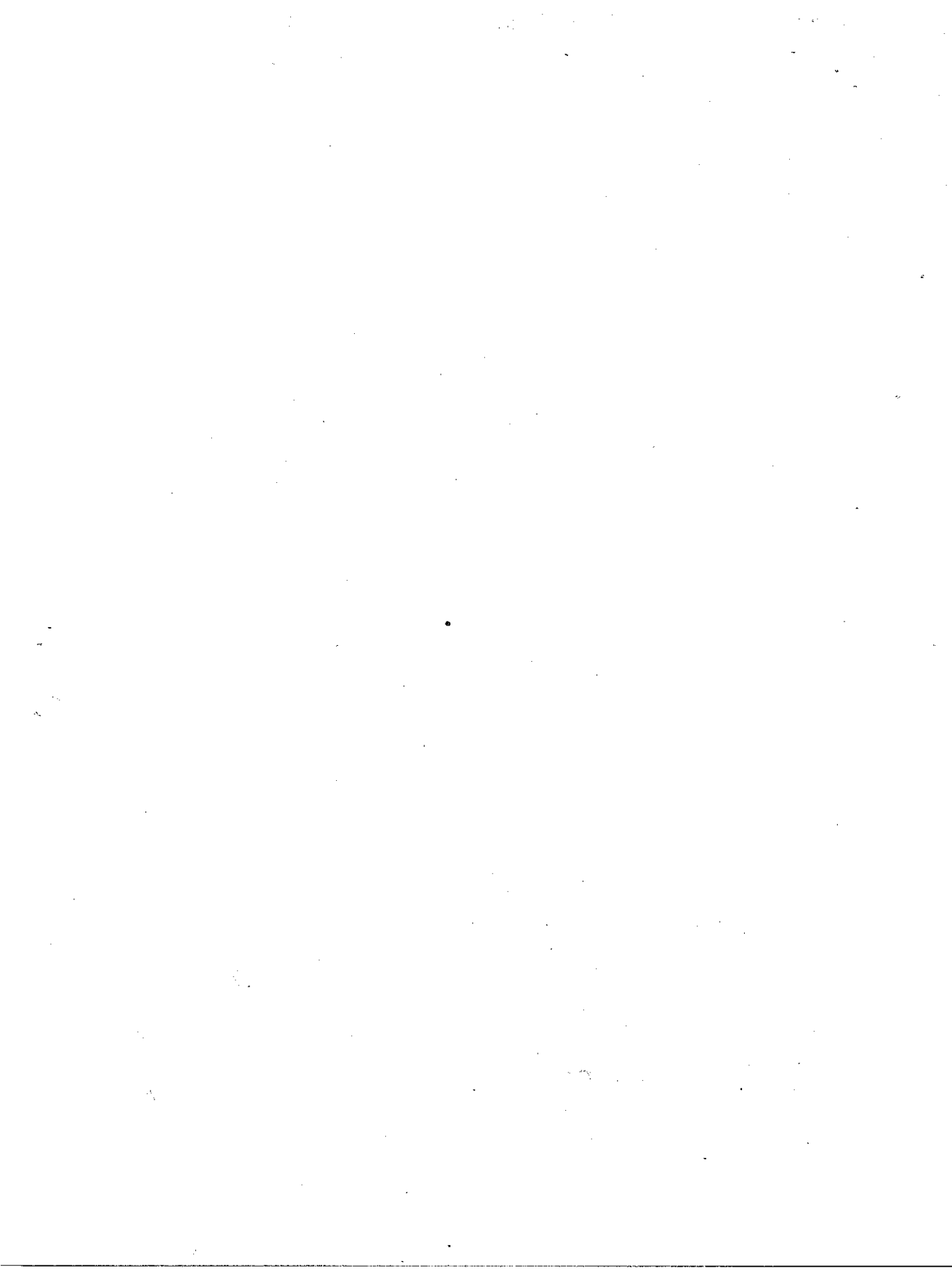
15           (q) costs for which records do not exist or are not correct in any  
16 material respect;

17           (r) costs incurred prior to the establishment of the company in  
18 Nigeria;

19           (s) any cost resulting from any arrangement or event that arises  
20 from fraud or wilful misconduct or negligence on the part of the company as  
21 determined by a competent court;

22           (t) costs incurred in organizing or managing any partnership, joint  
23 operating agreement, incorporated joint venture or other arrangement  
24 between or among companies or any assignments, mergers or acquisitions  
25 as well as the related fee pursuant to the Petroleum Industry Act, provided  
26 such fee in respect of any mergers or acquisitions shall be eligible for  
27 treatment under the First Schedule of this Act.

28           (u) insurance costs where such costs are earned by the company or  
29 an affiliate of the company, unless shown to be at arm's length and where it is  
30 applied for by the company and is verified and approved by the Service in





Artificial  
transactions

1 accordance with procedures established by the Service.

2           **21.**-(1) Where the Service is of opinion that any disposition is not in  
3 fact given effect to or that any transaction which reduces or would reduce the  
4 amount of any tax payable is artificial or fictitious, the Service may disregard  
5 any such disposition or direct that such adjustments shall be made as liability to  
6 tax as the Service considers appropriate so as to counteract the reduction of  
7 liability to tax effected, or to counteract the reduction which would otherwise  
8 be effected, by the transaction and the companies concerned shall be assessable  
9 accordingly and in this subsection, the expression "disposition" includes any  
10 trust, grant, covenant, agreement or arrangement.

11           (2) For the purpose of this section, transactions deemed to be artificial  
12 or fictitious, include:

13           (a) transactions between persons one of whom has control over the  
14 other; or

15           (b) transactions between persons both of whom are controlled by  
16 some other person which, in the opinion of the Service, have not been made on  
17 the terms which might fairly have been expected to have been made by  
18 independent persons engaged in the same or similar activities dealing with one  
19 another at arm's length.

20           (3) Nothing in this section shall prevent the decision of the Service in  
21 the exercise of any discretion given to the Service by this section from being  
22 questioned in an appeal against an assessment in accordance with the  
23 provisions of section 49 and on the hearing of the Federal High Court may  
24 confirm or vary any such decision including any directions made under this  
25 section.

Assessable  
profits and  
losses

26           **22.**-(1) The assessable profits of any company for any accounting  
27 period shall be the amount of the adjusted profit of that period after the  
28 deduction of:

29           (a) the amount of any loss incurred by that company during any  
30 previous accounting period; and

1 (b) in a case to which section 24 applies, the amount of any loss  
2 which under that section is deemed to be a loss incurred by that company in  
3 its trade or business during its first accounting period.

4 (2) A deduction under subsection (1) of this section shall be made  
5 so far as possible from the amount, if any, of the adjusted profit of the first  
6 accounting period after that in which the loss, was incurred, and, so far as it  
7 cannot be so made, then from the amount of the adjusted profit of the next  
8 succeeding accounting period and so on.

9 (3) Within five months after the end of any accounting period of a  
10 company, or within such further time as the Service may permit in writing in  
11 any instance, the company may elect in writing that a deduction or any part  
12 thereof to be made under this section shall be deferred to and be made in the  
13 succeeding accounting period, and may so elect from time to time in any  
14 succeeding accounting period.

15 23.-(1) Without prejudice to section 33, where a trade or business of  
16 upstream petroleum operations carried on in Nigeria by a company  
17 incorporated under any law in force in Nigeria is sold or transferred to a  
18 Nigerian company for the purposes of better organisation of that trade or  
19 business or the transfer of its management to Nigeria and any asset  
20 employed in that trade or business is so sold or transferred, then, if the  
21 Service is satisfied that one of those companies has control over the other or  
22 that both companies are controlled by some other person or are members of a  
23 recognised group of companies, the provisions set out in subsection (2) of  
24 this section shall have effect.

Trade or business  
sold or transferred  
to Nigerian company

25 (2) The Service may:

26 (a) direct that the respective petroleum production shall be  
27 attributable to the company from the date the sale or transfer takes place and  
28 that the respective accounting period shall commence pursuant to paragraph

29 (ii) of the definition of accounting period pursuant to section 84 hereof;

30 (b) direct that the Nigerian company, acquiring the asset so sold or,

Chargeable  
profits and capital  
allowances

1 26. -(1)The chargeable profits of any company of any accounting period  
2 shall be the amount of the assessable profits of that period after the deduction of  
3 any amount to be allowed in accordance with the provisions of this section and  
4 section 27.

5 (2)There shall be computed the aggregate amount of all allowances  
6 due to the company under the relevant provisions of the First Schedule to this  
7 Act for the accounting period.

8 (3)Where the total amount of the allowances computed under  
9 subsection (2) of this section cannot be deducted under subsection (1) of this  
10 section owing to there being an insufficiency of or no assessable profits of the  
11 accounting period, such total amount or the part thereof which has not been so  
12 deducted, shall be added to the aggregate amount to be computed under  
13 subsection (2) of this section for the following accounting period of the  
14 company, and thereafter shall be deemed to be an allowance due to the  
15 company, under the relevant provisions of the First Schedule to this Act for that  
16 following accounting period.

17 (4) Cost categories under section 19 (p), (q), (r), (s), (t) and (u) which  
18 are not deductible would also not qualify for capital allowances.

Other allowances

19 27.-(1) There shall be a general production allowance in order to  
20 encourage the production from oil fields determined monthly as follows:

21 (a) for onshore areas - the lower of US \$30 per barrel or 30% of the  
22 official selling price, up to a cumulative maximum production of 10 million  
23 barrels per field development plan and the lower of US \$ 12 per barrel or 30%  
24 of the official selling price for volumes exceeding 10 million barrels and up to a  
25 cumulative maximum production of 75 million barrels per field development  
26 plan;

27 (b) for shallow water areas - the lower of US \$30 per barrel or 30% of  
28 the official selling price, up to a cumulative maximum production of 20 million  
29 barrels per field development plan and the lower of US \$ 12 per barrel or 30%  
30 of the official selling price for volumes exceeding 20 million barrels and up to a

1 cumulative maximum production of 150 million barrels per field  
2 development plan; and

3 (c) for deep water areas - the lower of US \$ 15 per barrel or 30% of  
4 the official selling price, up to a cumulative maximum production of 250  
5 million barrels per field development plan.

6 (2) There shall be a general production allowance in order to  
7 encourage the development and production of new natural gas fields:

8 (a) The allowance shall be 50% of the value of the natural gas  
9 production pursuant to section 8 or US \$ 1 per million Btu, whichever is  
10 lower:

11 (i) for onshore areas, up to a cumulative maximum of 1000 billion  
12 standard cubic feet per field development plan;

13 (ii) for shallow water areas, up to a cumulative maximum of 2000  
14 billion standard cubic feet per field development plan; and

15 (iii) for deep water areas, up to a cumulative maximum of 3000  
16 billion standard cubic feet per field development plan.

17 (b) In addition to the allowance in subsection 2(a) of this section,  
18 there shall be a general production allowance for the development of dry  
19 gas fields of 100% of the value of the natural gas production pursuant to  
20 section 320 or US \$ 1 per million Btu, whichever is lower:

21 (i) for onshore areas, up to a cumulative maximum of 1000 billion  
22 standard cubic feet per field development plan;

23 (ii) for shallow water areas, up to a cumulative maximum of 2000  
24 billion standard cubic feet per field development plan; and

25 (iii) for deep water areas, up to a cumulative maximum of 3000  
26 billion standard cubic feet per field development plan.

27 (3) There shall be a general production allowance in order to  
28 encourage the condensate production from new gas fields of US \$ 20 per  
29 barrel or 30% of the official selling price, whichever value is lower:

30 (a) for onshore areas, up to a cumulative maximum of 100 million

1 barrels per field development plan;

2 (b) for shallow water areas, up to a cumulative maximum of 200  
3 million barrels per field development plan; and

4 (c) for deep water areas, up to a cumulative maximum of 300 million  
5 barrels per field development plan.

6 (4) The allowances provided in this section shall be allocated to  
7 companies on the basis of the entitlement of the relevant barrels and for  
8 production sharing contracts only cost oil barrels shall be taken into account to  
9 allocate these allowances.

10 (5) The gas allowances pursuant to subsection (2)(a) and subsection  
11 (2)(b) of this section, as applicable, shall only apply to any gas  
12 production which is subject to royalties and where such gas is not utilized for  
13 the purposes of reinjection.

14 (6) The total amount of the allowances computed under this section  
15 shall be deducted from the amount determined pursuant to subsection (1) of  
16 section 26, and where these allowances cannot be deducted under subsection  
17 (1) of section 26 owing to there being an insufficiency of or no assessable  
18 profits of the accounting period the deductions shall be added to the aggregate  
19 amount to be computed for the following accounting period of the company,  
20 and thereafter shall be deemed to be an allowance due to the company, under  
21 relevant provisions of the First Schedule to this Act for that following  
22 accounting period.

23 (7) Where a field development produces any combination of crude  
24 oil, condensate and natural gas, the allowances under subsections (1), (2) and  
25 (3) of this section can be taken separately.

26 (8) Subject to the provisions of subsection (9) of this section and of  
27 section 83 (1)(b)(iv) any field that on the effective date is in production or has  
28 been in production shall not be eligible for the allowances under this section.  
29 Notwithstanding the foregoing:

30 (a) any incremental production realised from a producing field

1 through a redevelopment sanctioned by a new or updated field development  
2 plan approved by the Commission shall qualify for the allowances provided  
3 in this section;

4 (b) all new and existing crude oil, condensate and gas production  
5 from deepwater shall be eligible for a general allowance of US \$ 3 per barrel  
6 of oil equivalent.

7 (9) Marginal field operators shall be able to apply the allowances  
8 under subsection (1), (2) and (3) hereof for the full cumulative amounts  
9 provided for in these subsections from the date such new leases are granted.

10 (10) The US \$ denominated prices and values referred to in any of  
11 the subsections of this section shall be adjusted pursuant to section 3 hereof.

12 28.-(1) Subject to provisions of section 83(1)(b)(v), the assessable Assessable tax  
13 tax for any accounting period of a company engaged in upstream petroleum  
14 operations shall be a percentage of the aggregate value of the chargeable  
15 profit from all upstream petroleum operations for that period as follows:

16 (a) for onshore and shallow water areas: 50%; and

17 (b) for deep water areas: 25%

18 (c) notwithstanding subsection (1)(a) and (1)(b) of this section,  
19 the assessable tax for any accounting period of a petroleum company  
20 producing an aggregate volume of not more than twenty-five thousand  
21 barrels of oil equivalent per day shall be as follows:

22 (i) for onshore and shallow water areas: 40%; and

23 (ii) for deep water areas: 20%.

24 (2) Where companies carry on operations in both geographical  
25 zones indicated under (a) and (b) of subsection (1) hereof, they shall submit  
26 separate tax returns for each zone. In this case:

27 (a) production shall be allocated in a similar manner as applicable  
28 to royalties under section 11 (2), and

29 (b) applicable deductions and capital allowances for PML's for  
30 which the production is entirely within a particular zone shall be allocated to

1 such zone; and

2 (c) applicable deductions and capital allowances for PML's for which  
3 the productions takes place from two zones shall be allocated pro- rata to the  
4 production.

Partnership

5 29.-(1)Any person (other than company) who engages in upstream  
6 crude oil operations or upstream gas operations either on his own account or  
7 jointly with any other person or in partnership with any other person with a  
8 view of sharing profits arising from those operations shall be guilty of an  
9 offence. Where such person has benefitted from any profits on upstream crude  
10 oil operations, such person shall be subject to the tax under this Chapter D of  
11 Part VIII on such profits and shall pay a penalty as provided for under section  
12 370.

13 (2)Where two or more companies are engaged in upstream petroleum  
14 operations either in partnership, in a joint operating agreement or in concert  
15 under any scheme or arrangement the Minister may make rules for the  
16 ascertainment of the tax to be charged and assessed upon each company so  
17 engaged, which may necessarily:

18 (a) provide for the apportionment of any profits, outgoing, expenses,  
19 liabilities, deductions, qualifying expenditure and the tax chargeable upon  
20 each company;

21 (b) provide for the computation of any tax as if the partnership, joint  
22 operating agreement, scheme or arrangement were carried on by one company  
23 and apportion that tax between the companies concerned;

24 (c) accept some other basis of ascertaining the tax chargeable upon  
25 each of the companies which may be put forward by those companies; or

26 (d) contain provisions which have regard to any circumstances  
27 whereby such operations are partly carried on for any companies by an  
28 operating company whose expenses are reimbursed by those companies.

29 (3)The rules referred to in subsection (1) of this section:

30 (a) shall be expressed to be of general application;

1 (b) may be amended or replaced from time to time as may be  
2 necessary.

3 (4) Rules made under this section shall not impose a greater burden  
4 of tax upon any company so engaged in any partnership, joint venture,  
5 scheme or arrangement than would have been imposed upon that company  
6 under this Act if all things enjoyed, done or suffered by such partnership,  
7 joint operating agreement, scheme or arrangement had been enjoyed, done  
8 or suffered by that company in the proportion in which it enjoys, does or  
9 suffers those things under or by virtue of that partnership, joint operating  
10 agreement, scheme or arrangement.

11 30.-(1) Notwithstanding the provisions of section 29(3), each  
12 company shall be responsible for reporting its own upstream petroleum  
13 operations profits, outgoings, expenses, qualifying expenditure and the tax  
14 chargeable on its upstream petroleum operations.

Each company  
responsible

15 31.-(1) The manager or any principal officer in Nigeria of every  
16 company which is or has been engaged in upstream petroleum operations  
17 shall be answerable for doing all such acts as are required to be done by  
18 virtue of this Part 5 for the assessment and charge to tax of such company  
19 and for payment of such tax.

Manager of  
companies to be  
answerable

20 32.-(1) Where:

Company wound  
up

21 (a) a company is being wound up; or

22 (b) where in respect of a company a receiver has been appointed by  
23 any Court, by the holders of any debentures issued by the company or  
24 otherwise, the company may be assessed and charged to tax in the name of  
25 the liquidator of the company or the receiver or any agent in Nigeria of the  
26 liquidator or receiver and may be so assessed and charged to tax for any  
27 accounting period whether before, during or after the date of the  
28 appointment of the liquidator or receiver.

29 (2) Any such liquidator, receiver or agent shall be answerable for  
30 doing all such acts as are required to be done by virtue of this Act for the



1 assessment and charge to tax of such company and for payment of such tax.

2 (3) Such liquidator or receiver under this section shall not distribute  
3 any assets of the company to the shareholders or debenture holders thereof  
4 unless he or she has made provision for the payment in full of any tax which  
5 may be found payable by the company or by such liquidator, receiver or agent  
6 on behalf of the company.

Avoidance by  
transfer

7 33.-(1) Where a company which is or was engaged in upstream  
8 petroleum operations transfers a substantial part of its assets to any person  
9 without having paid any tax, assessed or chargeable upon the company, for any  
10 accounting period ending prior to such transfer and in the opinion of the  
11 Service one reason for such transfer by the company is to avoid payment of  
12 such tax, then that tax as charged upon the company may be sued for and  
13 recovered from that person in a manner similar to a suit for any other tax under  
14 section 367, subject to any necessary modification of the amount pursuant to  
15 that section.

Indemnification  
of representative

16 34.-(1) Every person answerable under this Act for the payment of tax  
17 on behalf of a company may retain out of any money in or coming to his hands  
18 or within his de facto control on behalf of such company so much thereof as  
19 shall be sufficient to pay such tax, and shall be and is hereby indemnified  
20 against any person whatsoever for all payments made by him in accordance  
21 with the provisions of this Act.

Preparation and  
delivery of  
accounts and  
particulars

22 35.-(1) Every company which is or has been engaged in upstream  
23 petroleum operations shall for each accounting period of the company, make  
24 up accounts of its profits or losses, arising from those operations, of that period  
25 and shall prepare the following particulars:

26 (a) computations of its adjusted profit or loss and of its assessable  
27 profits of that period;

28 (b) in connection with the First Schedule to this Act, a schedule  
29 showing:

30 (i) the residues at the end of that period in respect of its assets;

1 (ii) all qualifying petroleum expenditure incurred by it in that  
2 period;

3 (iii) the values of any of its assets disposed of in that period; and

4 (iv) the allowances due to it under the said schedule for that period.

5 (c) a computation of its chargeable profits of that period;

6 (d) a statement of other sums, deductible under the liabilities for  
7 which were incurred during that period;

8 (e) a statement of all amounts repaid, refunded, waived or released  
9 to it, during that period;

10 (f) a computation of its estimated tax for that period;

11 (g) self-assessment of actual tax due; and

12 (h) the evidence of remittance of the last instalment.

13 (2) Every company which is or has been engaged in upstream  
14 petroleum operations shall, with respect to any accounting period of the  
15 company, within five months after the expiration of that period or within five  
16 months after the date of publication of this Act in the Federal Gazette upon  
17 enactment (whichever is later) deliver to the Service a copy of its accounts  
18 (bearing an auditor's certificate) of that period, made up in accordance with  
19 the provisions of subsection (1) of this section, and copies of the particulars  
20 referred to in that subsection relating to that period; and such copies of those  
21 accounts and each copy of those particulars (not being estimates) shall  
22 contain a declaration which shall be signed by a duly authorised officer of  
23 the company or by its liquidator, receiver or the agent of such liquidator or  
24 receiver, that the same is true and complete and where such copies are  
25 estimates each copy shall contain a declaration, similarly signed, that such  
26 estimate was made to the best of the ability of the person signing the same.

27 36.-(1) The Authority, the National Oil Company and the  
28 Commission shall provide information to the Service on:

29 (a) the approved budgets of joint ventures and for production

1 sharing contracts and information on project cost benchmarking and cost  
2 monitoring;

3 (b) production, lifting or exported crude and natural gas, LNG, CNG,  
4 NGLs, official selling prices, American Petroleum Institute gravity of various  
5 crude oil blends, schedule of shipping agents or companies involved in lifting  
6 crude oil, natural gas, LNG, CNG, NGLs stating names, addresses, quantity  
7 and value of such products handled lifted;

8 (c) names and addresses of licensed companies in the petroleum  
9 industry, schedule and approved cost of all exploration and appraisal wells,  
10 schedule of licences or concessions granted categorised as to petroleum  
11 prospecting licences and petroleum mining leases and payments made thereon,  
12 production and lifting of crude oil specifying the affected terminals by the  
13 Commission; and

14 (d) any other information that the Service may, by regulations,  
15 require, from time to time.

16 (2) Subsection (1)(a) of this section shall be delivered to the Service  
17 not later than thirty days after the approval.

18 (3) The information specified in subsection (1)(b) of this section shall  
19 be delivered to the Service on or before the last day of the month following that  
20 in which the production or lifting took place.

21 (4) The information specified in subsection (1)(c) of this section shall  
22 be delivered to the Service as follows:

23 (a) names and addresses of such shall be delivered not later than  
24 fifteen days after the issuance of licences to such companies;

25 (b) schedules and approved costs of all exploration and appraisals  
26 wells shall be delivered not later than thirty days after the approval; and

27 (c) schedules of licences/concessions granted shall be delivered on or  
28 before the last day of the month following the granting of licences/concession.

29 37.-(1) The Service may give notice in writing to any company which  
30 is or has been engaged in upstream petroleum operations when and as often as

1 the Service may require, requesting it to furnish within such reasonable time  
2 as may be specified by such notice fuller or further information as to any of  
3 the matters either referred to section 35, or as to any other matters which the  
4 Service may consider necessary for the purposes of this Act.

5 38.-(1) For the purpose of obtaining full information in respect of  
6 any company's upstream petroleum operations the Service may give notice  
7 to such company requiring it within the time limited by such notice, which  
8 time shall not be less than twenty-one days from the date of service of such  
9 notice, to complete and deliver to the Service any information called for in  
10 such notice and in addition or alternatively requiring an authorised  
11 representative of such company or its liquidator, receiver or the agent of  
12 such liquidator or receiver, to attend before the Service or its authorised  
13 representative on such date or dates as may be specified in such notice and to  
14 produce for examination any books, documents, accounts and particulars  
15 which the Service may deem necessary.

Power to call  
for returns

16 (2) If a company assessable to tax under the provisions of this Act  
17 fails or refuses to keep books or accounts which, in the opinion of the  
18 Service are adequate for the purpose of ascertaining the tax, the Service may  
19 by notice in writing require it to keep such records, books and accounts as  
20 the Service considers to be adequate in such form and in such language as the  
21 Service may in the said notice direct and, subject to the provisions of  
22 subsections (3) and (4) of this section, the company shall keep records,  
23 books and accounts as directed.

24 (3) An appeal shall lie from any direction of the Service made  
25 under this section to a judge of the High Court.

26 (4) On hearing such appeal the judge may confirm or modify such  
27 direction and any such decision shall be final.

28 39.-(1) Not later than two months after the commencement of each  
29 accounting period of any company engaged in upstream petroleum  
30 operations, the company shall submit to the Service a return, the form of

Returns of  
estimated tax

1 which the Service may prescribe, of its estimated tax for such accounting  
2 period.

3 (2) If, at any time during any such accounting period the company  
4 having made a return as provided for in subsection (1) of this section is aware  
5 that the estimate in such return requires revision then it shall submit a further  
6 return containing its revised estimated tax for such period.

7 (3) Where the further returns provided for under subsection (2) of this  
8 section is not made, the Service shall impose interest at the prevailing LIBOR  
9 plus two percentage points for the differential of actual tax over estimated tax  
10 paid by the company.

11 (4) Every return submitted in accordance with subsection (1) of this  
12 section shall be subject to review and validation by the Service.

Power of Service  
to review and  
reject estimated  
tax

13 40.-(1) The Service may reject any estimated tax pursuant to section  
14 351, if the estimates, in the opinion of the Service, are not reflective of current  
15 circumstances and may replace the estimates by an assessment of the Service.

Extension of  
periods for  
makings returns

16 41.-(1) Where it is shown by any company to the satisfaction of the  
17 Service that for some good reason the company is not able to comply with the  
18 provisions of section 35, within the time limited by that section or any notice  
19 given to it under sections 37 or 38, and within the time limited by any such  
20 notice, the Service may grant in writing such extension of that time as the  
21 Service may consider necessary.

Service to make  
assessments

22 42.-(1) The Service shall proceed to assess every company with the  
23 tax for any accounting period of the company as soon as may be after the  
24 expiration of the time allowed to such company for the delivery of the accounts  
25 and particulars provided for with respect to this Chapter.

26 (2) Where a company has delivered accounts and particulars for any  
27 accounting period of the company, the Service may:

28 (a) accept the same; or

29 (b) refuse to accept the same and proceed as provided in subsection

30 (3) of this section upon any failure as therein mentioned and the like

1 consequences shall ensue.

2 (3)Where, for any accounting period of a company, the company  
3 has failed to deliver accounts and particulars provided for in section 35  
4 within the time limited by that section or has failed to comply with any  
5 notice given to it under the provisions of sections 37 or 38 within the time  
6 specified in such notice or within any extended time provided for within this  
7 Act, and the Service is of the opinion that such company is liable to pay tax,  
8 the Service may estimate the amount of the tax to be paid by such company  
9 for that accounting period and make an assessment accordingly, but such  
10 assessment shall not affect any liability otherwise incurred by such company  
11 by reason of its failure or neglect to deliver such accounts and particulars or  
12 to comply with such notices; and nothing in this subsection shall affect the  
13 right of the Service to make any additional assessment under the provisions  
14 of section 356.

15 43.-(1)Without prejudice to any other power conferred on the Powers to distraint  
16 Service for the enforcement of payment of tax due from a company that has  
17 been properly served with an assessment which has become final and  
18 conclusive and a demand notice has been served upon the company in  
19 accordance with the provisions of this Part 5, or has been served on the  
20 company or upon the person in whose name the company is chargeable,  
21 then, if payment of tax is not made within the time specified by the demand  
22 notice, the Service may in the prescribed form, for the purpose of enforcing  
23 payment of the tax due:

24 (a) distraint the taxpayer by his goods, other chattels, bond or other  
25 securities; or

26 (b) distraint upon any land, premises or places in respect of which  
27 the taxpayer is the owner and, subject to the provisions of this section,  
28 recover the amount of tax due by sale of anything so distrained.

29 (2) The power to distraint under this section shall be in the form  
30 contained in the Fourth Schedule to the Federal Inland Revenue Service

1 (Establishment) Act 2007, and such authority shall be sufficient warrant and  
2 authority to levy by distraint the amount of tax due.

3 (3) For the purpose of levying any distraint under this section, an  
4 officer duly authorised by the Executive Chairman of the Service may apply to  
5 a Judge of the Federal High Court sitting in Chambers under oath for the issue  
6 of a warrant under this section.

7 (4) The Judge of the Federal High Court may on application made ex-  
8 parte authorise such officer, referred to in subsection (3) of this section, in  
9 writing to execute any warrant of distraint and, if necessary, break open any  
10 building or place in the daytime for the purpose of levying such distraint and he  
11 or she may call to his assistance any police officer and it shall be the duty of any  
12 police officer when so required to aid and assist in the execution of any warrant  
13 of distraint and in levying the distraint.

14 (5) Things distrained under this section may, at the cost of the owner  
15 thereof, be kept for fourteen days, at the end of which time, if the  
16 amount due in respect of tax and the cost and charges incidental to the distraint  
17 are not paid, they may, subject to subsection (8) of this section, be sold at any  
18 time thereafter.

19 (6) There shall be paid out of the proceeds of sale, in the first instance,  
20 the cost or charges incidental to the sale and keeping of the distraint, and the  
21 residue, if any, after the recovery of the tax liability, shall be payable to the  
22 owner of the things distrained upon demand being made within one year of the  
23 sale or shall thereafter be forfeited.

24 (7) In exercise of the powers of distraint conferred by this section, the  
25 person to whom the authority is granted under subsection (4) of this section  
26 may distrain upon all goods, chattels and effects belonging to the debtor  
27 wherever the same may be found in Nigeria.

28 (8) Nothing in this section shall be construed as authorising the sale of  
29 any immovable property without an order of a Court of competent jurisdiction.

1                   44.-(1) If the Service discovers or is of the opinion at any time that, Additional  
2                   with respect to any company liable to tax, tax has not been charged and assessments  
3                   assessed upon the company or has been charged and assessed upon the  
4                   company at a less amount than that which ought to have been charged and  
5                   assessed for any accounting period of the company, the Service may within  
6                   six years after the expiration of that accounting period and as often as may be  
7                   necessary, assess such company with tax for that accounting period at such  
8                   amount or additional amount as in the opinion of the Service ought to have  
9                   been charged and assessed, and may make any consequential revision of the  
10                  tax charged or to be charged for any subsequent accounting period of the  
11                  company.

12                  (2) Where a revision under subsection (1) of this section results in a  
13                  greater amount of tax to be charged than has been charged or would  
14                  otherwise be charged an additional assessment, or an assessment for any  
15                  such subsequent accounting period shall be made accordingly, and the  
16                  provisions of this Act as to notice of assessment, objection, appeal and other  
17                  proceedings under this Act shall apply to any such assessment or additional  
18                  assessment and to the tax charged thereunder.

19                  (3) For the purpose of computing under subsection (1) of this  
20                  section the amount or the additional amount of tax for any accounting period  
21                  of a company which ought to have been charged, all relevant facts consistent  
22                  with subsection (3) of section 50 shall be taken into account even though  
23                  not known when any previous assessment or additional assessment on the  
24                  company for that accounting period was being made or could have been  
25                  made.

26                  (4) Notwithstanding the other provisions of this section, where any  
27                  form of fraud, wilful default or neglect has been committed by or on behalf  
28                  of any company in connection with any tax imposed under this Act, the  
29                  Service may, at any time and as often as may be necessary, for the purpose of  
30                  recovering any loss of tax attributable to the fraud,



1 wilful default or neglect.

2 (5) With respect to the collection of any additional tax under this  
3 section, section 39(3) shall apply.

Making of  
assessments

4 45.-(1) Assessment of tax shall be made in such form and in such  
5 manner as the Service shall authorise and shall contain the names and  
6 addresses of the companies assessed to tax or of the persons in whose names  
7 any companies (with the names of such companies) have been assessed to tax,  
8 and in the case of each company for each of its accounting periods, the  
9 particular accounting period and the amount of the chargeable profits of and  
10 assessable tax and chargeable tax for that period.

11 (2) When any assessment requires to be amended or revised, a form of  
12 amended or revised assessment shall be made in a manner similar to that in  
13 which the original of that assessment was made under subsection (1) of this  
14 section but showing the amended or revised amount of the chargeable profits,  
15 assessable tax and chargeable tax.

16 (3) A copy of each assessment and of each amended or revised  
17 assessment shall be filed in a list which shall constitute the Assessment List for  
18 the purpose of this Act.

Notices of  
Assessment

19 46.-(1) The Service shall cause to be served personally on or sent by  
20 registered post to each person whose name appears on an assessment in the  
21 Assessment List, a notice of assessment stating its accounting period and the  
22 amount of its chargeable profits, assessable tax and chargeable tax charged and  
23 assessed upon the company, the place at which payment of the tax should be  
24 made, and informing such company of its rights under subsection (2) of this  
25 section.

26 (2) If any person in whose name an assessment was made in  
27 accordance with the provisions of this Act disputes the assessment, that person  
28 may apply to the Service, by notice of objection in writing, to review and revise  
29 the assessment so made on him; and such application shall be made within  
30 twenty-one days from the date of service of the notice of such assessment and

1 shall state the amount of chargeable profits of the company of the  
2 accounting period in respect of which the assessment is made and the  
3 amount of the assessable tax and the tax which such person claims should be  
4 stated on the notice of assessment.

5 (3) The Service, upon being satisfied that owing to absence from  
6 Nigeria, sickness or other reasonable cause, the person in whose name the  
7 assessment was made was prevented from making the application within  
8 such period of twenty-one days shall, extend the period as may be  
9 reasonable in the circumstances.

10 (4) After receipt of a notice of objection referred to in subsection  
11 (2) of this section the Service may within such time and at such place as the  
12 Service shall specify, require the person giving the notice of objection to  
13 furnish such particulars as the Service may deem necessary, and may by  
14 notice within such time and at such place as the Service shall specify, require  
15 any person to give evidence orally or in writing resisting any matters  
16 necessary for the ascertainment of the tax payable, and the Service may  
17 require such evidence if given orally to be given on oath or if given in writing  
18 to be given by affidavit.

19 (5) In the event of any person assessed who has objected to an  
20 assessment made upon him agreeing with the Service as to the amount of tax  
21 liable to the assessed, the assessment shall be amended accordingly, and  
22 notice of the tax payable shall be served upon such person.

23 (6) If an applicant for revision under the provisions of subsection  
24 (2) of this section fails to agree with the Service the amount of the tax, the  
25 Service shall give such applicant notice of refusal to amend the assessment  
26 as desired by such applicant, and may revise the assessment to such amount  
27 as the Service may determine and give such applicant notice of the revised  
28 assessment and of the tax payable together with notice of refusal to amend  
29 the revised assessment and, wherever requisite, any reference in this Act to  
30 an assessment or to an additional assessment shall be treated as a reference

1 to an assessment or to an additional assessment as revised under the provisions  
2 of this subsection.

Errors and defects  
in assessment and  
notice

3 47.-(1) No assessment, warrant or other proceeding purporting to be  
4 made in accordance with the provisions of this Act shall be quashed, or deemed  
5 to be void or voidable, for want of form, or be affected by reason of a mistake,  
6 defect or omission therein, if the same is in substance and effect in conformity  
7 with or according to the intent and meaning of this Act or any Act amending the  
8 same, and if the company assessed or intended to be assessed or affected  
9 thereby is designated therein according to common intent and understanding.

10 (2) An assessment shall not be impeachable or affected:

11 (a) by reason of a mistake therein as to:

12 (i) the name of a company liable or of a person in whose name a  
13 company is assessed; or

14 (ii) the amount of the tax.

15 (b) by reason of any variance between the assessment and the notice  
16 thereof, if in cases of assessment, the notice thereof be duly served on the  
17 company intended to be assessed or on the person in whose name the  
18 assessment was to be made on a company, and such notice contains, in  
19 substance and effect, the particulars on which the assessment is made.

Nigerian  
Hydrocarbon Tax  
computation

20 48.-(1) Tax computations made under this Part 5, including any  
21 assessments made under section 42, shall be made in US dollar.

Appeals to  
Federal High  
Court against  
assessments

22 49.-(1) Subject to Section 59 of the FIRS Act and the Fifth Schedule  
23 thereto, every company appealing shall appoint an authorised representative  
24 who shall attend before the court in person on the day and at the time fixed for  
25 the hearing of its appeal, but if it be proved to the satisfaction of the judge that  
26 owing to absence from Nigeria, sickness or other reasonable cause any duly  
27 appointed representative is prevented from attending in person at the hearing of  
28 the company's appeal on the day and at the time fixed for that purpose, the  
29 judge may postpone the hearing of the appeal, for such reasonable time as he or  
30 she thinks necessary for the attendance of the appellant's representative, or he

1 or she may admit the appeal to be made by any other agent, clerk or servant  
2 of the appellant, on its behalf or by way of written statement.

3 (2) Twenty-one clear days' notice shall, unless rules made  
4 hereunder otherwise provide, be given to the Service of the date fixed for the  
5 hearing of the appeal.

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

8 (4) The judge may confirm, reduce, increase or annul the  
9 assessment or make such order thereon as to him may deem fit.

10 (5) Notice of the amount of tax payable under the assessment as  
11 determined by the judge shall be served by a duly authorised representative  
12 of the Service either personally or by registered post to the appellant.

13 (6) Notwithstanding anything contained in this Act, if in any  
14 particular case, the judge from information given at the hearing of the  
15 appeal, is of the opinion that the tax may not be recovered, he or she may on  
16 application being made by or on behalf of the Service require the appellant  
17 to furnish within such time as may be specified security for payment of the  
18 tax and if such security is not given within the time specified the tax assessed  
19 shall become payable and recoverable forthwith.

20 (7) All appeals shall be heard in camera, unless the judge shall, on  
21 the application of the appellant, otherwise direct.

22 (8) The costs of the appeal shall be in the discretion of the judge  
23 hearing the appeal and the judge shall fix a sum.

24 (9) The Chief Judge of the Federal High Court may make rules  
25 providing for the method of tendering evidence before a judge on appeal, the  
26 conduct of such appeals and the procedure to be followed by a judge upon  
27 stating a case for the opinion of the Court of Appeal.

28 (10) Pending the making of any rules under this subsection, the  
29 rules applicable in civil appeal cases from Magistrates Court to the High  
30 Court of Lagos State shall apply to any appeal or to any such procedure for

1 the purposes of this section and Act with any necessary modifications.

2 (11) An appeal against the decision of the judge shall lie to the Court  
3 of Appeal:

4 (a) at the instance of the appellant where the decision of the judge is to  
5 the effect that the correct assessment of tax is in the sum of US \$ 1000 or  
6 upwards; and

7 (b) at the instance of the Service where the decision of the judge is in  
8 respect of a matter in which the Service claimed that the correct assessment of  
9 tax was in the sum of US \$ 1000 or upwards.

Assessment to  
be final and  
conclusive

10 50.-(1) Where:

11 (a) no valid objection or appeal has been lodged within the time  
12 limited by either section 46 or 49, as the case may be, against an assessment as  
13 regards the amount of the tax assessed thereby;

14 (b) where the amount of the tax has been agreed to under subsection  
15 (5) of section 46;

16 (c) the amount of the tax has been determined on objection or revision  
17 under subsection (6) of section 46; or

18 (d) on appeal, the assessment is made, agreed to, revised or  
19 determined on appeal, as the case may be, the said assessment shall be final and  
20 conclusive for all purposes of this Act as regards the amount of such tax, and if  
21 the full amount of the tax in respect of any such final and conclusive assessment  
22 is not paid within the appropriate period or periods prescribed in this Act, the  
23 provisions thereof relating to the recovery of tax, and to any penalty under  
24 section 53 shall apply and any late payment of tax shall be subject to an interest  
25 rate of LIBOR plus 2%.

26 (2) Where an assessment has become final and conclusive, any tax  
27 overpaid shall be refunded pursuant to the FIRS Act 2007.

28 (3) Nothing in section 46 shall prevent the Service from making any  
29 assessment or additional assessment to tax for any accounting period which  
30 does not involve re-opening any issue on the same facts which has been

1 determined for that accounting period under subsection (5) or (6) of section  
2 46, by agreement or otherwise or on appeal.

3 51.-(1) Collection of tax shall in cases where notice of an objection  
4 or an appeal has been given remain in abeyance, any pending proceedings  
5 for any instalment thereof being stayed until such objection or appeal is  
6 determined but the Service may in any such case enforce payment of that  
7 portion of the tax (if any) which is not dispute.

Procedure in  
cases where  
objection or  
appeal is pending

8 52.-(1) Subject to the provision's of section 44, tax for any  
9 accounting period for upstream petroleum operations shall be payable in  
10 equal monthly instalments together with a final instalment as provided in  
11 subsection (4) of this section.

Time within which  
payment is to be  
made

12 (2) The first monthly payment shall be due and payable not later  
13 than the third month of the accounting period and shall be in an amount  
14 equal to one-twelfth or, where the accounting period is less than a year, in an  
15 amount equal to monthly proportion, of the amount of tax estimated to be  
16 chargeable for such accounting period in accordance with section 39.

17 (3) Each of the remainder of monthly payments to be made  
18 subsequent to the payment under subsection (2) of this section shall be due  
19 and, payable not later than the last day of the month in question and shall be  
20 in an amount equal to the amount of tax estimated to be chargeable for such  
21 period by reference to the latest returns submitted by the company in  
22 accordance with subsection (2) of section 39, less so much as has already  
23 been paid for such accounting period divided by the number of such of the  
24 monthly payments remaining to be made in respect of such accounting  
25 period.

26 (4) A final instalment of tax shall be due and payable upon the filing  
27 of the annual tax returns and shall be the amount of the self- assessment for  
28 that accounting period less so much thereof as has already been paid under  
29 subsection (2) and (3) of this section or is the subject of proceedings.

30 (5) Any instalments on account of tax estimated to be chargeable

1 shall be treated as tax charged and assessed for the purposes of section 53 and  
2 55.

3 (6) The Service shall impose interest at a rate of LIBOR plus 2%.

4 (7) For the purposes of subsection (1) of this section, the conversion  
5 of the timing of payments of tax to provide for the making of monthly payments  
6 shall be given effect by a regulation to be made by the Minister pursuant to this  
7 Act

Penalty for non-  
payment of tax  
and enforcement  
of payment

8 53.-(1) If any tax is not paid within the period stipulated in section 52:

9 (a) a penalty equal to 10 per cent per annum of the amount of tax  
10 payable shall be added thereto, and the provisions of this Act relating to the  
11 collection and recovery of tax shall apply to the collection of such sum;

12 (b) the tax due shall incur interest at LIBOR plus 2% from the date  
13 when the tax becomes payable until it is paid and the provisions of this Act  
14 relating to collection and recovery of tax shall apply to the collection and  
15 recovery of the interest;

16 (c) the Service shall serve a demand note upon the company or person  
17 in whose name the company is chargeable, and if the payment is not made  
18 within one month from the date of service of such demand note, the Service  
19 may proceed to enforce payment as provided in this section;

20 (d) the penalty and interest imposed under this subsection shall not be  
21 deemed to be part of the tax paid for the purpose of claiming relief under any of  
22 the provisions of this Act.

23 (2) Any company which without lawful justification or excuse fails to  
24 pay the tax within the period of one month prescribed in paragraph (b) of  
25 subsection (1) of this section, commits an offence under this Act, and the  
26 burden of proof of such justification or excuse shall be on the company.

27 (3) The Service may, for any good cause shown, remit the whole or  
28 any part of the addition due under subsection 1 of this section.

Collection of  
tax after  
determination  
of objection or  
appeal

29 54.-(1) Where payment of tax in whole or in part has been held over  
30 pending the result of a notice of objection or of appeal, the tax outstanding

1 under the assessment as determined on such objection or appeal as the case  
2 may be shall be payable forthwith as to any part thereof in proceedings  
3 stayed pending such determination and as to the balance thereof within one  
4 month from the date of service on the company assessed or on the person in  
5 whose name the company is assessed, of the notification of the tax payable,  
6 and if such balance is not paid within such period the provisions of section  
7 53 shall apply.

8           55.-(1) Tax may be sued for and recovered in a court of competent  
9 jurisdiction at the place at which payment should be made, by the Service in  
10 its official name with full costs of suit from the company assessed to such tax  
11 or from the person in whose name the company  
12 is assessed to such tax as a debt due to the Government of the Federation.

Suit for Tax by  
the Board

13           (2) For the purposes of this section, a court of competent  
14 jurisdiction shall include a magistrate's court, which court is hereby invested  
15 with the necessary jurisdiction, if the amount claimed in any suit does not  
16 exceed the amount of the jurisdiction of the magistrate concerned with  
17 respect to personal suits.

18           (3) In any suit under subsection (1) of this section the production of  
19 a certificate signed by any person duly authorised by the Service giving the  
20 name and address of the defendant and the amount of tax due by the  
21 defendant shall be sufficient evidence of the amount so due and sufficient  
22 authority for the court to give judgment for the said amount.

23           56.-(1) If any person who has paid tax for any accounting period  
24 alleges that any assessment made upon him or in name for that period was  
25 excessive by reason of some error or mistake in the accounts, particulars or  
26 other written information supplied by him to the Service for the purpose of  
27 the assessment, such person may at any time, not later than six years after the  
28 end of the accounting period in respect of which the assessment was made,  
29 make an application in writing to the Service for relief.

Relief in respect  
of error

30           (2) On receiving any such application the Service shall inquire into



1 the matter and subject to the provisions of this section shall by way of  
2 repayment of tax give such relief in respect of the error or mistake as appears to  
3 the Service to be reasonable and just.

4 (3) No relief shall be given under this section in respect of an error or  
5 mistake as to the basis on which the liability of the applicant ought to have been  
6 computed where such accounts, particulars or information was in fact made or  
7 given on the basis or in accordance with the practice of the Service generally  
8 prevailing at the time when such accounts, Particular or information was made  
9 or given.

10 (4) In determining any application under this section the Service shall  
11 have regard to all the relevant circumstances of the case, and in particular shall  
12 consider whether the granting of relief would result in the exclusion from  
13 charge to tax of any part of the chargeable profits of the applicant, and for this  
14 purpose the Service may take into consideration the liability of the applicant  
15 and assessments made upon him in respect of other years.

16 (5) No appeal shall lie from a determination of the Service under this  
17 section, which determination shall be final and conclusive.

Repayment of  
Tax

18 57.-(1) Save as otherwise expressly provided in this Act, no claim for  
19 the repayment of any tax overpaid shall be allowed unless it is made in writing  
20 within six years next after the end of the accounting period to which it relates  
21 and if the Service disputes any such claim it shall give to the claimant notice of  
22 refusal to admit the claim and the provisions of the relevant sections of this Part  
23 5 shall apply with any necessary modifications.

24 (2) The Service shall give a certificate of the amount of any tax to be  
25 repaid under any of the provisions of this Act or under any order of a court of  
26 competent jurisdiction and upon the receipt of the certificate, the Accountant-  
27 General of the Federation shall cause repayment to be made in conformity  
28 therewith.

Penalty for  
Offences

29 58.-(1) Any person guilty of an offence against this Act or of any rule  
30 made there under for which no other penalty is specifically provided, shall be

1 liable to a fine of US \$ 10,000, and where such offence is one under  
 2 subsection (1) of section 29, or is a failure to submit a return under section  
 3 39, or is a failure, arising from the provisions of sections 35 through 41 to  
 4 deliver accounts, particulars or information or to keep records required, a  
 5 further sum of US \$ 2,000 for each and every day during which such offence  
 6 or failure continues, and in default of payment to imprisonment for six  
 7 months, the liability for such further sum to commence from the day  
 8 following the conviction, or from such day thereafter as the court may order.

9 (2) Any person who:

10 (a) fails to comply with the requirements of a notice served on him  
 11 under this Act;

12 (b) having a duty so to do, fails to comply with the provisions of  
 13 section 35;

14 (c) without sufficient cause fails to attend in answer to a notice or  
 15 summons served on him under this Act or having attended fails to answer  
 16 any question lawfully put to him; or

17 (d) fails to submit any return required to be submitted by the  
 18 relevant sections of this Chapter shall be guilty of an offence.

19 (3) Any offence in respect of which a penalty is provided by  
 20 subsection (1) of this section shall be deemed to occur in Abuja.

21 **59.-(1) Any person who:**

22 (a) makes or signs, or causes to be made or signed, or delivers or  
 23 causes to be delivered to the Service or any officer of the Service, any  
 24 declaration, notice, certificate or other document whatsoever; or

25 (b) makes any statement in answer to any question or enquiry put to  
 26 him by an officer which he or she is required to answer by or under this Act or  
 27 any other enactment or law, being a document or statement produced or  
 28 made for any purpose of tax, which is untrue in any material particular,  
 29 commits an offence under this section.

30 (2) Where by reason of any such document or statement required to

False statements  
and returns

1 be produced under subsection (1) of this section the full amount of any tax  
2 payable is not paid or any overpayments made in respect of any repayment of  
3 tax, the amount of tax unpaid or the overpayment shall be recoverable as a debt  
4 due to the Service.

5 (3) Any person who commits an offence under this section shall be  
6 liable on conviction to a fine of US \$ 1,000,000 and 100 per cent of the amount  
7 of tax unpaid or overpayment made in respect of any repayment or to  
8 imprisonment for a term of three years or to both such fine and imprisonment.

Penalties for  
offences by  
authorised and  
unauthorised  
persons

9 **60.**-(1) Any person who is appointed for the due administration of this  
10 Act or employed in connection with the assessment and collection of a tax who:

11 (a) demands from any company an amount in excess of the authorised  
12 assessment of the tax;

13 (b) withholds for his own use or otherwise any portion of the amount  
14 of tax collected;

15 (c) renders a false return, whether orally or in writing, of the amount  
16 of tax collected or received by him;

17 (d) defrauds any person, embezzles any money, or otherwise uses his  
18 position to deal wrongfully with the Service;

19 (e) steals or misuses Service documents; or

20 (f) compromises on the assessment or collection of any taxes,  
21 commits an offence and shall be liable on conviction to a fine equivalent to  
22 two-hundred per cent of the sum in question or to imprisonment for a term of  
23 three years or to both such fine and imprisonment.

Recovery of  
Nigerian  
Hydrocarbon  
Tax at source

24 **61.**-(1) Tax assessable on any company, whether or not an assessment  
25 has been made, shall, if the Service so directs, be recoverable from any  
26 payment made or to be made by any person to such company.

27 (2) Any such directive referred to in subsection (1) of this section may  
28 apply to any person or class of persons specified in such directive, either with  
29 respect to all companies or a company or class of companies, liable to payment  
30 of income tax.

1 (3) Any directive under subsection (1) of this section shall be in  
2 writing addressed to the person or published in the Federal Gazette.

3 (4) In determining the rate of tax to be applied to any payments  
4 made to a company, the Service may take into account:

5 (a) any assessable profits of that company for the year arising from  
6 any other source on which income tax is chargeable under this Part; and

7 (b) any income tax or arrears of tax payable by that company for  
8 any of the six preceding years of assessment.

9 (5) Income tax recovered pursuant to this by deduction from  
10 payments made to a company shall be set-off for the purpose of collection  
11 against tax charged on such company by an assessment.

12 (6) For the purposes of this, the rate at which tax is to be deducted  
13 and the nature of activities and the services for which a company making the  
14 payment is to deduct tax and the date when the payment is made or credited  
15 which ever first occurs shall be in accordance with the regulations to be  
16 issued by the Minister responsible for Finance acting on the advice of the  
17 Service with the approval of the Federal Executive Council.

18 62.-(1) Income tax assessable on any company, partnership or  
19 person (whether or not resident in Nigeria) who provides services related to  
20 upstream petroleum operations and related activities to a company carrying  
21 on upstream petroleum operations in Nigeria, whether or not an assessment  
22 has been made, shall be recoverable from any payment (whether or not made  
23 in Nigeria) made by any person to such company, partnership or person.

Deduction of tax  
at source

24 (2) For the purpose of this section, the rate at which tax to be  
25 deducted and the nature of the activities and services for which a company  
26 making the payment is to deduct tax and the date when the payment is made  
27 or credited, whichever first occurs, shall be as specified in Government  
28 Notice No. 450, Official Gazette No 34, Volume 72 of 27th June, 1985 or  
29 any Government Notice replacing it.

30 (3) A company which has deducted tax under this section shall

1 forward to the Service the amount of tax deducted and shall also forward a  
2 statement showing the name and address of the person who suffered the tax  
3 deduction and the nature of activities or services in respect of which the  
4 payment was made.

5 (4) Income tax recovered under the provisions of this section by  
6 deduction from payments made to a company, partnership or person shall be  
7 set-off for the purposes of collection against tax charged on such company,  
8 partnership or persons by an assessment; provided that the total of such  
9 deductions does not exceed the amount of the assessment.

Tax to be payable  
notwithstanding  
any proceedings  
for penalties

10 63.-(1) The institution of proceedings for or the imposition of, a  
11 penalty, fine or term of imprisonment under this Part 5 shall not relieve any  
12 person from liability to payment of any tax for which he or she is or may  
13 become liable.

Prosecution to  
be with the  
sanction of the  
service

14 64.-(1) No prosecution in respect of an offence under section 60 may  
15 be commenced, except at the instance of or with the sanction of the Service.

Savings for  
Criminal  
Proceedings

16 65.-(1) The provisions of this Part 5 shall not affect any criminal  
17 proceedings under any other Act or law.

Double taxation  
arrangements  
with other  
territories

18 66.-(1) If the Minister responsible for Finance acting on the advice of  
19 the Service by order declares that arrangements specified in the order have  
20 been made with the Government of territory outside Nigeria with a view to  
21 affording relief from double taxation in relation to tax imposed under the  
22 provisions of this Act and any tax of a similar character imposed by the laws of  
23 that territory, and that it is expedient that those arrangements should have  
24 effect, the arrangements shall have effect notwithstanding anything in any  
25 enactment.

26 (2) The Minister responsible for Finance acting on the advice of the  
27 Service may make rules for carrying out the provisions of any arrangements  
28 having effect under this section.

29 (3) An order made under the provisions of subsection (1) of this  
30 section may include provisions for relief from tax for accounting periods

1 commencing or terminating before the making of the order and provisions as  
2 to income (which expression includes profits) which is not itself liable to  
3 double taxation.

4 (4) Where, before the publications of this Act in the Federal  
5 Gazette upon enactment, any order has been made under the provisions of  
6 section 33 of the Personal Income Tax Act and the arrangements specified in  
7 that order, with any modifications, are expressed to apply to a tax in a  
8 territory outside Nigeria and to income tax in Nigeria and to any other taxes  
9 of a substantially similar character either imposed in that territory or Nigeria  
10 or imposed by either contracting party to any such arrangements after those  
11 arrangements came into force and:

12 (a) such order was made before the 1st day of January, 1958, then,  
13 for the purposes of this Act, that order shall be deemed to have been made  
14 under this section on that day and those arrangements shall have effect, in  
15 Nigeria, as respects tax for any accounting period; or

16 (b) such order was made on a day after the year 1957, then, for the  
17 purposes of this Act, that order shall be deemed to have been made under this  
18 section on that day and the arrangements specified therein shall have effect,  
19 in Nigeria, as respects tax for any accounting period beginning on or after  
20 the date when those arrangements come into force and for the unexpired  
21 portion of any accounting period current at that date.

22 (5) The Minister responsible for Finance acting on the advice of the  
23 Service may by order replace or vary any order deemed to have been made  
24 under this section for the purposes of this Act, without otherwise affecting  
25 such last mentioned order for the purpose of any other Act.

26 67.-(1) In this section

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

29 "income" means that part of the profits of any accounting period which is  
30 liable to both tax and foreign tax, before the deduction of any tax, foreign

Method of  
calculating relief  
to be allowed for  
double taxation

1 tax, credit therefore or relief granted under subsection (6) of this section.

2 (2) The provisions of this section shall have effect where, under  
3 arrangements having effect under section 66, foreign tax payable in respect of  
4 any income in the territory with the Government of which the arrangements are  
5 made is allowed as a credit against tax payable in respect of that income in  
6 Nigeria.

7 (3) The amount of the credit admissible to any company under the  
8 terms of any such arrangements shall be set off against the tax chargeable upon  
9 that company in respect of the income, and where that tax has been paid the  
10 amount of the credit may be repaid to that company or carried forward against  
11 the tax chargeable upon that company of any subsequent accounting period.

12 (4) The credit for an accounting period shall not exceed whichever is  
13 the less of the following amounts, that is to say:

14 (a) the amount of the foreign tax payable on the income; or

15 (b) the amount of the difference between the tax chargeable under this  
16 Act before allowance of credit under any arrangements having effect under the  
17 relevant sections of Part 5 of this Act and the tax which would be so chargeable  
18 if the income were excluded in computing profits.

19 (5) Without prejudice to the provisions of subsection (4) of this  
20 section, the total credit to be allowed to a company for any accounting period  
21 for foreign tax under all arrangements having effect under section 64 shall not  
22 exceed the total tax which would be ultimately borne by that company, for that  
23 accounting period, if no such credit had been allowed.

24 (6) Where the income includes a dividend and under the arrangements  
25 foreign tax not chargeable directly or by deduction in respect of the dividend is  
26 to be taken into account in considering if any, and if so what, credit is to be  
27 given against tax in respect of the dividend, the amount of the income shall be  
28 increased by the amount of the foreign tax not so chargeable which falls to be  
29 into account in computing the amount of the credit.

30 (7) Where the amount of the foreign tax attributable to the income

1 exceeds the credit therefore computed under subsection (4) of this section,  
2 then the amount of that income, to be included in computing profits for any  
3 purposes of this Act other than that of subsection (4) of this section, shall be  
4 taken to be the amount of that income increased by the amount of the credit  
5 therefore after deduction of the foreign tax.

6 (8) Where:

7 (a) the arrangements provide, in relation to dividends of some  
8 classes, but not in relation to dividends of other classes, that foreign tax not  
9 chargeable directly or by deduction in respect of dividends is to be taken into  
10 account in considering if any, and if so what, credit is to be given against tax  
11 in respect of the dividends; and

12 (b) a dividend is paid which is not of a class in relation to which the  
13 arrangements so provide, then, if a dividend is paid to a company which  
14 controls, directly or indirectly, not less than half of the voting power in the  
15 company paying the dividends, credit shall be allowed as if the dividend  
16 were a dividend of a class in relation to which the arrangements so provide.

17 (9) Any claim for an allowance by way of credit shall be made not  
18 later than three years after the end of the accounting period, and in the event  
19 of any dispute as to the amount allowable the Service shall give to the  
20 claimant notice of refusal to admit the claim which shall be subject to appeal  
21 in like manner as an assessment.

22 (10) Where the amount of any credit given under the arrangements  
23 is rendered excessive or insufficient by reason of any adjustment of the  
24 amount of any tax payable either in Nigeria or elsewhere, nothing in this Act  
25 limiting the time for the making of assessments or claims for repayment of  
26 tax shall apply to any assessment or claim to which the adjustment gives rise,  
27 being an assessment or claim made not later than three years from the time  
28 when all such assessments, adjustments and other determination have been  
29 made whether in Nigeria or elsewhere, as are material in determining  
30 whether any, and if so that, credit falls to be given.



1 (11) Where a company is not resident in Nigeria throughout an  
2 accounting period no credit shall be admitted in respect of any income included  
3 in the profits of that company of that period.

Procedure for  
amendment of  
schedules

4 68.-(1) At any time after the effective date, the Minister may by  
5 regulation amend or delete any of the powers or duties specified in the First  
6 Schedule or include therein additional powers or duties.

7 PART 6: PRODUCTION SHARING CONTRACTS AND OTHER CONTRACTS  
8 OF THE NATIONAL OIL COMPANY

Minimum  
provisions of  
contracts

9 69.-(1) The National Oil Company may at its discretion enter into  
10 production sharing contracts or enter into any other contracts pursuant to  
11 section [.] of the Petroleum Industry Act.

12 (2) Any contract of the National Oil Company as concessionaire shall  
13 contain as a minimum the fiscal provisions provided for in Part 6 of this Act.

14 (3) Each contract shall be subject to the conditions of the petroleum  
15 prospecting licences and petroleum mining leases as defined in Petroleum  
16 Industry Act.

Rents, Royalties  
and Taxes

17 70.-(1) All contracts including production sharing contracts shall be  
18 subject to the rents, royalties and tax provisions contained in this Act, as  
19 clarified in the further subsections of this section.

20 (2) All companies comprising the contractor of a contract shall pay  
21 Companies Income Tax and Nigerian Hydrocarbon Tax directly to the Service  
22 on their share of cost petroleum, profit petroleum and any other share of  
23 petroleum and on any remuneration under contracts pursuant to section [.] of  
24 the Petroleum Industry Act, and any or on their remuneration, as well as any  
25 cost petroleum and profit petroleum from production sharing contracts in  
26 existence prior to the effective date, as well as incidental income that the  
27 companies may have obtained as a result of the operations under the contract.

28 (3) The National Oil Company shall pay the rents under this Part to the  
29 Commission.

30 (4) The National Oil Company shall take the royalties under this Part

1 in kind on a monthly basis and shall pay the equivalent amount in cash to the  
2 Commission.

3 (5) The National Oil Company shall not include any provisions in  
4 the contract that would lower the rents, royalties or taxes established under  
5 this Part.

6 71.-(1) Contracts may contain the bonuses, which shall be lump Bonuses  
7 sum amounts in cash or in production as follows:

8 (a) a signature bonus in cash;

9 (b) crude oil production bonuses, based on daily or cumulative  
10 production, to be paid in cash or in crude oil; or

11 (c) gas production bonuses, based on daily or cumulative  
12 production, to be paid in cash or in natural gas.

13 (2) Signature bonuses and the production bonuses shall not be  
14 recoverable as cost petroleum for purposes of a production sharing contract.

15 (3) The National Oil Company shall deposit any signature bonuses  
16 and production bonuses in the account established for that purpose by the  
17 Commission.

18 72.-(1) In case of production sharing contracts, the available Available  
petroleum in  
production  
sharing contracts  
19 petroleum, cost petroleum and profit petroleum shall be determined  
20 separately for each production sharing contract.

21 (2) The production share between the licensee and contractor for  
22 crude oil and condensates shall be determined based on the available oil,  
23 which shall be the total amount of crude oil and condensates produced each  
24 month as determined pursuant to section 320, less the royalty equivalent as  
25 paid pursuant to section 70(4).

26 (3) The production share between the licensee and contractor for  
27 natural gas shall be determined based on the available gas, which shall be the  
28 total amount of natural gas produced each month as determined pursuant to  
29 section 8, less the royalty equivalent as paid pursuant to subsection 70(4).

30 (4) The production allocation between the licensee and contractor

1 for petroleum shall be determined based on the available petroleum which shall  
2 be the total amount of petroleum produced each month as determined pursuant  
3 to section 8, less the royalty equivalent as paid pursuant to subsection 70(4).

Valuation

4 73.-(1) Where a contract requires the valuation of petroleum such  
5 valuation shall be based on the same values as are applicable to royalties under  
6 section 8.

Funding of costs  
under production  
sharing contracts

7 74.-(1) The contractor under a production sharing contract shall be  
8 responsible for all costs related to the upstream petroleum operations and shall  
9 incur these costs at its own risk. Such costs shall be deductible under Nigerian  
10 Hydrocarbon Tax and Companies Income Tax unless specifically disallowed  
11 pursuant to the provisions of this Act for NHT purposes and the Companies  
12 Income Tax Act for Companies Income Tax purposes.

Cost Petroleum  
limits under  
production  
sharing contracts

13 75.-(1) The recovery of costs in the form of cost petroleum shall  
14 include all costs defined as recoverable in the production sharing contract.

15 (2) Where any such costs specified in subsection (1) hereof are not  
16 recovered before the last day of the contract as cost petroleum, such costs shall  
17 be non-recoverable.

18 (3) All costs under subsection (1) shall be recovered in accordance  
19 with the accounting procedure annexed to the production sharing contract,  
20 where such costs are recoverable pursuant to Part 6 of this Act.

Allocation

21 76.-(1) Associated gas produced with crude oil will be allocated as  
22 defined in section 72(2) of this Act.

Revenues to be  
credited against  
recoverable costs

23 77.-(1) Under the accounting procedure of a production sharing  
24 contract the following revenues earned under the contract shall be credited  
25 against recoverable costs:

26 (a) the proceeds of any insurance or claim in connection with the  
27 upstream petroleum operations or any assets charged to the accounts;

28 (b) any legal costs claimed and subsequently recovered;

29 (c) revenues earned from third parties for the use of property or assets,  
30 for the delivery of any services by the contractor or for any information or data;

1 (d) any discounts or adjustments earned by the contractor from the  
2 suppliers/manufacturers or their agents in connection with goods purchased  
3 or defective equipment or materials, the costs of which were previously  
4 charged to the accounts;

5 (e) rentals, refunds or other credits earned by the contractor, which  
6 apply to any charge which has been made to the accounts;

7 (f) earnings from the disposal of assets, applying the valuation  
8 criteria for materials established in the accounting procedure annexed to the  
9 contract;

10 (g) in case contractor sells, exports or transfers any material,  
11 equipment or supplies to affiliates or other entities or persons, the value of  
12 such transfer shall be credited to the costs which were previously charged to  
13 the accounts; and

14 (h) such other revenues as may be identified in the accounting  
15 procedure to be credited against recoverable costs.

16 78.-(1)The available petroleum less the cost petroleum shall be Profits Petroleum  
17 profit petroleum.

18 79.-(1)The National Oil Company shall carry out such audits as Audit procedures  
19 required for a period of three years, following the year in which the  
20 expenditure was incurred.

21 (2) The details of the audit process shall be established in the  
22 contract and shall not relate to the audits that are required under any of the  
23 payments under section 70, which have their own audit processes as  
24 provided for under this Part or decided by the Commission.

25 (3) There shall be no time limit on any audits related to alleged  
26 fraud or wilful misconduct, and the National Oil Company shall have the  
27 right to re-examine reports and statements that otherwise were considered  
28 final.

29 (4) The impact of any exceptions that have been identified shall be  
30 calculated back to the month to which such exception applies and the

1 amounts of adjustment shall be applied as a correction to the production  
2 sharing calculations for the month following the final determination of such  
3 exception. Where the share of the production to the contractor or the National  
4 Oil Company is insufficient in order to accommodate the exception, the  
5 correction shall be applied to successive months until fully absorbed and where  
6 the exception is of an amount that cannot be accommodated for the remainder  
7 of the contract or after the termination of the contract the correction shall be due  
8 in cash.

9 (5) The contractor shall be required to include in the contracts with  
10 affiliates and subcontractors audit and record retention provisions which allow  
11 the National Oil Company to carry out such audits as required.

12 (6) If any entity comprising the contractor conducts an audit of the  
13 books and records of operator or any other entity comprising the Contractor  
14 pertaining to the contract, it shall provide free of any charges to the National Oil  
15 Company a copy of the audit results, a report setting out the audit exceptions,  
16 claims and queries and the manner in which these exceptions, claims and  
17 queries were finally allowed or denied by operator or other entity.

18 (7) Subject to the delivery of books, records and documents to the  
19 National Oil Company in accordance with the contract upon termination of the  
20 contract, all books, records and documents must be maintained by the  
21 contractor, the contractor's affiliates and subcontractors and made available for  
22 inspection until the later of:

23 (a) the period established under subsection (1) of this section;

24 (b) if any cost or amount is under dispute, the time at which that  
25 dispute has been resolved; and

26 (c) such longer period as may be legally required.

27 **80.-(1)** Any contract entered into after the effective date, can only be  
28 entered into by the National Oil Company on the basis of a model approved  
29 pursuant to section [e] of the Petroleum Industry Act.

## PART 7: MISCELLANEOUS PROVISIONS

81.-(1) All companies, lessees, licensees, concessionaires, joint ventures, contractors and other entities involved in petroleum operations shall be subject to such other taxes, duties and levies as may apply to them from time to time, including, without restricting the generality of the foregoing, capital gains tax, education tax, withholding taxes, stamp duties, any other taxes and levies under the Taxes and Levies (approved List for Collection) Act approved for collection by the Federal Government, any State Government and any Local Government, with the exception of any tax or levy from which the companies are specifically exempted.

Other taxes,  
duties and levies

## PART 8 - REPEALS, TRANSITIONAL AND SAVINGS PROVISIONS

82.-(1) From the effective date the following enactments are hereby repealed:

Repeals

(a) Associated Gas Re-injection Act Cap. A25 Laws of the Federation 2004;

(b) Deep Offshore and Inland Basin Production Sharing Contracts Act Cap. 03 Laws of the Federation of Nigeria 2004;

(c) Hydrocarbon Oil Refineries Act No. 17 of 1965, Cap. H5 Laws of the Federation of Nigeria 2004;

(d) Motor Spirits (Returns) Act Cap. M20 Laws of the Federation of Nigeria 2004;

(e) Nigerian National Petroleum Corporation Act No. 73 of 1977, Cap. 123 Laws of the Federation of Nigeria 2004;

(f) Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAPN124 Laws of the Federation of Nigeria 2004;

(g) Nigerian National Petroleum Corporation (Amendment) Act, 2007;

(h) Petroleum Act 1969, CAP 350 Laws of the Federation 1990;

(i) Petroleum (Amendment) Decree No. 23 of 1996;

(j) Petroleum (Amendment) Decree No. 22 of 1998;

1 (k) Petroleum Products Pricing Regulatory Agency (Establishment)  
2 Act 2003;

3 (l) Petroleum Equalisation Fund (Management Board, etc.) Act NO.9  
4 of 1975, Cap. P11 Laws of the Federation of Nigeria 2004;

5 (m) Petroleum Profits Tax Act, Cap. P13 Laws of the Federation  
6 2004;

7 (n) Petroleum (Special) Trust Fund Act, Cap P14 Laws of the  
8 Federation of Nigerian 2004; and

9 (o) Petroleum Technology Development Fund Act, Cap. P15 Laws of  
10 the Federation of Nigeria 2004.

11 (2) Any subsidiary legislation repealed as a result of the repeal of any  
12 of the enactments in subsection (1) of this section shall, in so far, as it is not  
13 inconsistent with this Act, remain in operation until it is revoked or replaced by  
14 subsidiary legislation made under this Act, and shall be deemed for all purposes  
15 to have been made under this Act.

Savings provisions

16 **83.**-(1) Any licence and lease granted under the Mineral Oils Act,  
17 1958 and the Petroleum Act 1969 shall continue, subject to all the provisions of  
18 the Petroleum Industry Act except:

19 (a) that for oil mining leases at the effective date the following shall  
20 apply:

21 (i) with respect to the application of Act, the new provisions shall be  
22 effective from the effective date;

23 (ii) capital allowances applicable to investments incurred and credits  
24 obtained prior to the effective date, shall be applied for the purposes of  
25 Nigerian Hydrocarbon Tax and Companies Income Tax. With respect to any  
26 existing production sharing contracts, the contractor parties which have  
27 incurred costs for the creation of assets to "be owned by a licensee of a  
28 petroleum prospecting licence or lessee of a petroleum mining lease prior to the  
29 effective date and have not yet claimed such costs and/or capital allowances  
30 under such contracts, shall be entitled to expense all such costs and/or capital

1 allowances for purposes of Nigerian Hydrocarbon Tax and Companies  
2 Income Tax;

3 (iii) carry forward losses existing prior to the effective date, shall  
4 be applied to the calculation of the Nigerian Hydrocarbon  
5 Tax and Companies Income Tax;

6 (iv) with respect to section 27, where field development activities  
7 started prior to the effective date and commercial production commenced  
8 after January 1, 2009, the lessee shall be entitled to claim allowances under  
9 section 27 and the incentives under section 6(4);

10 (v) notwithstanding the provisions of subsection (1) of section 28,  
11 for all upstream petroleum operations from either onshore or shallow water  
12 which are governed by a production sharing contract in existence prior to the  
13 effective date, for the remainder of the term of such a production sharing  
14 contract, the assessable tax for each contract area shall be 30% of the  
15 aggregate value of the chargeable proof;

16 (vi) notwithstanding the provisions of subsection (1)(a) of section  
17 27, for all upstream petroleum operations from onshore areas which are  
18 governed by a production sharing contract in existence prior to the effective  
19 date, for the remainder of the term of such a production sharing contract, the  
20 general production allowance for onshore areas, if applicable, shall be the  
21 lower of US \$15 per barrel or 30% of the official selling price, up to a  
22 cumulative maximum production of 75 million barrels per field  
23 development plan; and

24 (vii) notwithstanding the provisions of subsection (1)(b) of section  
25 27, for all upstream petroleum operations from shallow water areas which  
26 are governed by a production sharing contract in existence prior to the  
27 effective date, for the remainder of the term of such a production sharing  
28 contract, the general production allowance for shallow water areas, if  
29 applicable, shall be the lower of US \$15 per barrel or 30% of the official  
30 selling price, up to a cumulative maximum production of 150 million barrels



- 1 (ii) an OPL and any PPL derived therefrom; or
- 2 (iii) an OML and any PML derived therefrom plus any contractual
- 3 consolidated areas as defined in the respective production sharing contracts;
- 4 "crude oil" means mineral oil in its natural state before it has been refined and
- 5 treated;
- 6 "de Commissioning" or "abandonment" refers to the approved process of
- 7 cessation of operations of oil and gas wells installations and structures,
- 8 including shutting down installation's operation and production, total or partial
- 9 removal of installations and structures where applicable, chemicals,
- 10 radioactive and all such other materials handling, removal and disposal of
- 11 debris and removed items, environmental monitoring of the area after removal
- 12 of installations and structures;
- 13 "deep water" means areas offshore Nigeria with a water depth in excess of 200
- 14 meters;
- 15 "downstream" means all activities entered into for the purpose of processing,
- 16 distribution and supply of petroleum to customers, construction and operation
- 17 of facilities consuming petroleum, product pipelines, tank farms, stations for
- 18 the distribution, marketing and retailing of petroleum products and other
- 19 construction and activities incidental thereto;
- 20 "dry gas" means gas containing less than ten barrels of condensate per million
- 21 standard cubic feet;
- 22 "fiscalised crude" means the net quantity of crude oil and or condensate
- 23 produced in a batch or cargo ready for export after the removal of solid and
- 24 liquid impurities of the crude; or the total quantum of crude oil at standard
- 25 temperature and pressure that is produced and metered at all export terminals in
- 26 Nigeria or at the delivery point to the refinery in Nigeria, multiplied by the
- 27 posted prices;
- 28 "frontier acreages" means any or all licences or leases located in the Anambra,
- 29 Benue Trough, Bida, Chad, Dahomey, and Sokoto Basins of Nigeria;
- 30 "gas" or "natural gas" means wet gas, dry gas, lean gas, all other gaseous

1 hydrocarbons, and all substances contained therein, which are produced  
2 along with crude oil or gas, excluding those condensed or extracted liquid  
3 hydrocarbons that are liquid at normal temperatures and pressure conditions  
4 such as stabilized or field condensate, including the residue gas remaining  
5 after the condensation or extraction of the liquid hydrocarbon from gas;

6 "Gas flaring" means any flaring of natural gas associated with the process of  
7 oil production, and includes continuous production flaring but excludes  
8 safety flaring and non-continuous production flaring. Analogous  
9 expressions, such as "gas flare" "flaring of gas", "flare gas" shall have the  
10 same meaning as "gas flaring";

11 "Gazette" means the Gazette of the Federal Government of Nigeria;

12 "Government" means the government of the Federal Republic of Nigeria;

13 "indigenous petroleum company" means a company:

14 (a) engaged in the exploration for and production of petroleum of  
15 which sixty percent (60) per cent or more of its shares are beneficially  
16 owned directly or indirectly by Nigerian citizens or associations of Nigerian  
17 citizens;

18 (b) which meets the requirements of any guidelines or regulations  
19 that may be issued by the Commission or the Commission; and

20 (c) which is accredited as an indigenous petroleum company by the  
21 Commission;

22 "industry" means the petroleum industry in Nigeria;

23 "Inland Basin" means any of the following basins, namely; Anambra, Benin,  
24 Benue, Chad, Bida, Dahomey, Gongola, Sokoto and such other basins as  
25 may be determined by from time to time, by the Minister;

26 "intangible drilling costs" means all expenditure for labour fuel, repairs,  
27 maintenance, hauling, and supplies and materials (not being supplies and  
28 materials for well cement, casing or other well fixtures) which are for or  
29 incidental to drilling, cleaning, deepening or completing wells or the  
30 preparation thereof incurred in respect of:

1 (a) determination of well locations, geological studies, topographical  
2 and geographical surveys preparatory to drilling;

3 (b) drilling, shooting, testing and cleaning wells;

4 (c) cleaning, draining and leveling land, road building and the laying  
5 of foundations;

6 (d) erection of rigs and tankage assembly and installation of pipelines  
7 and other plant and equipment required in the preparation or drilling of wells  
8 producing petroleum;

9 "Institutions" or "Institution" refers to the Oil and Gas Directorate, the  
10 Nigerian Petroleum Commission, the National Petroleum Assets Management  
11 Agency and the Nigeria Petroleum Research Centre, either jointly, any two or  
12 more of the said Institutions, or singly;

13 "UBOR" means, as of any date of determination, the per annum rate of interest,  
14 based on a three hundred sixty (360) day year, rounded downwards, if  
15 necessary, to the nearest whole multiple of one- sixteenth of one percent  
16 (1/16th%), determined as the simple average of the offered quotations  
17 appearing on the display referred to as the "UBOR Page" (or any display  
18 substituted therefore) of Reuters Monitor Money Rates Service or, if such  
19 "UBOR Page" shall not be available, the simple average of the offered  
20 quotations appearing on page 3750 of the AP/Dow Jones Telerate Systems  
21 Monitor (or any page substituted therefore) for deposits in U.S. Dollars for a  
22 three month period, at or about 11:00 a.m. (London, England time) on the first  
23 London Banking Day of the calendar quarter in which the date of  
24 determination occurs (or, if the first day of such calendar quarter in which the  
25 date of determination occurs is not a London Banking Day, the immediately  
26 preceding London Banking Day). If neither such "LIBOR Page" nor such page  
27 3750 or any successor page is available, or if for any reason a rate of interest  
28 cannot be determined as aforesaid, then the Parties shall designate an  
29 alternative mechanism consistent with Eurodollar market practices for  
30 determining such rate. For purposes of this definition, a "London Banking

1 Day" is a day on which dealings in deposits in Dollars are transacted on the  
2 London interbank market;  
3 "Liquefied natural gas" or "LNG" means natural gas in its liquid state at  
4 approximately atmospheric pressure;  
5 "loss" means a loss ascertained in like manner as an adjusted profit;  
6 "Marginal field" means a petroleum field which:  
7 (i) has been left unattended for a period of not less than 10 years  
8 from the date of first discovery of the field; and  
9 (ii) has been confirmed by the Minister as a marginal field; OR as  
10 defined under the Petroleum Industry Act;  
11 "Minister" means the Minister in charge of petroleum resources and  
12 overseeing the petroleum industry in Nigeria;  
13 "MMbtu" means one million BTU;  
14 "MMscf" means one million standard cubic feet;  
15 "National Gas Master Plan" has the meaning as specified in section [.] of the  
16 Petroleum Industry Act;  
17 "National Oil Company" has the meaning as specified in section 94;  
18 "Natural gas liquids" or "NGL" means hydrocarbons liquefied at the surface  
19 in separators, field facilities or in gas processing plants and include but are  
20 not limited to ethane, propane, butanes, pentanes, and natural gasoline,  
21 mayor may not include condensate;  
22 "Nigeria" includes the submarine areas beneath the territorial waters of  
23 Nigeria and the submarine areas beneath any other waters which are or at  
24 any time shall in respect of mines and minerals become subject to the  
25 legislative competence of the National Assembly; lit...  
26 "Nigerian Content" has the meaning as defined in the Nigerian Oil and Gas  
27 Industry Content Development Act, 2010;  
28 "Nigerian company" means a company incorporated in Nigeria;  
29 "Nigerian Hydrocarbon Tax" or "NHT" has the meaning as specified in  
30 section 13;

- 1 "Non-associated gas" means natural gas accumulation which does not occur  
2 with crude oil;
- 3 "Non-productive rents" means and includes the amount of any rent as to which  
4 there is provision for its deduction from the amount of any royalty under a  
5 petroleum prospecting licence or petroleum mining lease to the extent that such  
6 rent is not so deducted;
- 7 "official selling price" means the price at which comparable crude oil or  
8 condensate of similar quality could be sold on similar terms at similar times by  
9 parties under no compulsion to buy or sell and whereby none of such parties  
10 exerts or is in a position to exert influence on the other party having regard to all  
11 relevant factors;
- 12 "Person" means any individual, company or other juristic person;
- 13 "petroleum" means mineral oil (or any related hydrocarbon) or natural gas as it  
14 exists in its natural state in strata, and includes tar sands, heavy oils, bituminous  
15 and other stratified deposits from which oil can be extracted by destructive  
16 distillations but does not include coal;
- 17 "petroleum exploration licence" or "PEL" means a licence granted to a  
18 company pursuant to section [e] of the Petroleum Industry Act;
- 19 "petroleum exploration operations" means any geological, geophysical,  
20 geochemical and other surveys and any interpretation of data relating thereto,  
21 and the drilling of such shot holes, core holes, stratigraphic tests, exploration  
22 wells for the discovery of petroleum, appraisal of discoveries and other related  
23 operations;
- 24 "Petroleum Industry Act" refers to [e];
- 25 "petroleum mining lease" or "PML" means a lease granted to a company  
26 pursuant to section [.] of the Petroleum Industry Act;
- 27 "petroleum operations" means the winning or obtaining and transportation of  
28 petroleum chargeable oil in Nigeria by or on behalf of a company for its own  
29 account by any drilling, mining, extracting or other like operations or process,  
30 not including refining at a refinery, in the course of a business carried on by the

1 (a) That expenditure is incurred in respect of an asset owned by the  
2 company then such expenditure shall be deemed to be qualifying  
3 expenditure incurred by it on that day; or

4 (b) that expenditure is incurred in respect of an asset which has  
5 been disposed of by the company before the beginning of its first accounting  
6 period then any loss suffered by the company on the disposal of such asset  
7 shall be deemed to be qualifying petroleum expenditure incurred by the  
8 company on that day and be deemed to have brought into existence an asset  
9 owned by the company in use for the purposes of upstream petroleum  
10 operations carried on by the company any profit realised by the company on  
11 such disposal shall be treated as income of the company of its first  
12 accounting period for the purposes of subsection (1)(a) of section 18 of this  
13 Act.

14 *Provisions Relating to Qualifying Petroleum Expenditure*

15 1. For the purposes of this Schedule where-

16 (a) expenditure has been incurred before its first accounting period  
17 and such expenditure would have been treated as such qualifying petroleum  
18 expenditure (ascertained without the qualification contained in the proviso  
19 in the interpretation of qualifying expenditure) if it had been incurred in that  
20 first accounting period; and

21 (b) such expenditure (ascertained in the case of sub-paragraph (1)  
22 (a) of this paragraph without such qualification) shall be deemed to have  
23 brought into existence an asset owned by the company incurring the  
24 expenditure and in use for the purposes of such upstream petroleum  
25 operations.

26 2. For the purposes of this Schedule, an asset in respect of which  
27 qualifying drilling expenditure has been incurred by any company for the  
28 purposes of upstream petroleum operations carried on by it during any  
29 accounting period of the company, and which has not been disposed of, shall  
30 be deemed not to cease to be used for the purposes of such operations so long

1 as such company continues to carry on such operations.

2 3. So much of any qualifying petroleum expenditure incurred on the  
3 acquisition of rights in or over petroleum deposits and on the purchase of  
4 information relating to the existence and extent of the deposit as exceeds the  
5 total of the original cost of acquisition of such rights and of the cost of  
6 searching for, discovering and testing such deposits prior to the purchase of  
7 such information shall be left out of account for the purposes of the schedule.

8 *Owner and Meaning of Relevant Interest*

9 1. For the purposes of this Schedule, where an asset consists of a  
10 building structure or works, the owner thereof shall be taken to be the owner of  
11 the relevant interest in such building, structure or works.

12 2. Subject to the provisions of this paragraph, in this Schedule, the  
13 expressions "the relevant interest" means, in relation to any expenditure  
14 incurred on the construction of a building, structure or works to which the  
15 company which incurred such expenditure was entitled when it incurred the  
16 expenditure.

17 3. Where, when a company incurs qualifying building expenditure or  
18 qualifying expenditure on the construction of a building, structure or works,  
19 the company is entitled to two or more interests therein, and one of those  
20 interests is an interest which is reversionary on all the others, that interest shall  
21 be the relevant interest for the purposes of this Schedule.

22 4. Where an asset is acquired by any hirer or lessee under a finance  
23 lease contract, the terms of which provide for the transfer of ownership, risks  
24 and reward to the hirer or lessee, the provisions of this schedule shall apply in  
25 the same way as it applies to an asset acquired by the owner or lessor of an asset  
26 for the purposes of his trade or business but shall apply subject to the total lease  
27 payment due from the hirer or lessee during his basis period, excluding in the  
28 computation of such qualifying expenditure any interest charges payable under  
29 the contract.

*Sale of Buildings*

1  
2 1. Where capital expenditure has been incurred on the construction  
3 of a building, structure or works and thereafter the relevant interest company  
4 which buys that interest shall be deemed, for all the purposes of this  
5 Schedule, to have incurred, on the date when the purchase price became  
6 payable, capital expenditure on the construction thereof equal to the price  
7 paid by it for such interest or to the original cost of construction, whichever  
8 is the less: Provided that:

9 (a) Where such relevant interest is sold before the building,  
10 structure or works has been used, the foregoing provisions of this paragraph  
11 shall have effect with respect to such sale and the original cost of  
12 construction shall be taken to be the amount of the purchase price on such  
13 sale;

14 (b) Where, any such relevant interest is sold more than once before  
15 the building, structure or works is used, the provisions of sub- paragraph (a)  
16 shall have effect only in relation to the last of those sales.

*Annual Allowance*

17  
18 1. Subject to the provisions of this Schedule where in any  
19 accounting period a company owning any assets has incurred in respect  
20 thereof qualifying expenditure exclusively for the purposes of upstream  
21 petroleum operations carried on by it, there shall be due to that company as  
22 from the accounting period in which such expenditure was incurred an  
23 allowance (in this Act referred to as "an annual allowance") at the  
24 appropriate rate per centum specified in Table I of this Schedule.

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

29 3. Any asset or part thereof in respect of which capital allowances  
30 have been granted may only be disposed of on the authority of a Certificate



1 of Disposal issued by the Minister or any person authorised by him.

2 4. Where a licensee or lessee has entered into a contract pursuant to  
3 section Error! Reference source not found. of this Act and such contract  
4 provides for the transfer of assets to such licensee or lessee by the contractor,  
5 such transfer shall be valued as equal to the value of cost petroleum paid for  
6 such assets ("the deemed income") and the licensee or lessee can claim the  
7 annual allowances in respect of the qualifying expenditures associated with  
8 such asset against such deemed income; and where the contractor has incurred  
9 the expenditures for the creation of such asset pursuant to subsection 19 (1)(i)  
10 of the Act, such asset shall not result in annual allowances to the contractor.

11 5. An annual allowance in respect of qualifying expenditure incurred  
12 in respect of any asset shall be due to a company for any accounting period if at  
13 the end of such accounting period it was the owner of that asset and the  
14 expenditure of such asset have been incurred during such accounting period for  
15 the purposes of the upstream petroleum operations carried on by it.

#### 16 *Balancing Allowances*

17 1. Subject to the provisions of this Schedule, where in any accounting  
18 period of a company, the company owning any asset in respect of which it has  
19 incurred qualifying expenditure wholly and exclusively for the purposes of  
20 upstream petroleum operations carried on by it, disposes of that asset an  
21 allowance (hereinafter called "a balancing allowance") shall be due to that  
22 company for that accounting period the loss incurred as a result of the excess of  
23 the residue of that expenditure, at the date such asset is disposed of, over the  
24 value of that asset at that date; provided that a balancing allowance shall only  
25 be due in respect of such asset if immediately prior to its disposal it was in use  
26 by such company for the purposes of the upstream petroleum operations for  
27 which such qualifying expenditure was incurred.

#### 28 *Balancing Charges.*

29 1. Subject to the provisions of this Schedule, wherein any accounting  
30 period:

1 company engaged in such operations, and all operations incidental thereto  
2 and any sale of or any disposal of chargeable oil by or on behalf of the  
3 company;

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

8 "petroleum prospecting licence" or "PPL" means a licence pursuant to  
9 section 153 of this Act;

10 "regulation" means rule or order having force of law issued by the Minister  
11 for Petroleum or any of the Institutions, in accordance with the provisions of  
12 the Petroleum Industry Act;

13 "rent" includes any annual or other periodic charge made in respect of a  
14 licence granted under the Petroleum Industry Act;

15 "resident in Nigeria", in relation to a company, means a company the control  
16 and management of the business of which are exercised in Nigeria;

17 "royalties" means and includes-

18 (a) the amount of any rent as to which there is provision for its  
19 deduction from the amount of any royalties under an oil prospecting license  
20 or oil mining lease to the extent that such rent is so deducted; and

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

23 "Service" means the Federal Inland Revenue Service;

24 "shallow water" means the area from the seaward boundary of each littoral  
25 State up to the two hundred meter water depth isobaths;

26 "significant gas discovery" means a discovery of natural gas that is  
27 substantial in terms of reserves and is potentially commercial, but cannot be  
28 declared commercial for one or more of the following reasons:

29 (a) no markets or natural gas within Nigeria;

30 (b) export markets need to be identified and developed;

1 (c) no pipeline, processing or liquefaction capacity is available in  
2 existing systems where commercial conditions indicate the best option for  
3 development is based on future expansion of such systems or use of such  
4 systems when capacity will become available in the future; or

5 (d) where the natural gas discovery would only be commercial when  
6 jointly developed with other existing natural gas discoveries or potential future  
7 natural gas discoveries.

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

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

15 "tax" means chargeable tax;

16 "ultra-deep water" means areas offshore Nigeria with a water-depth in excess  
17 of 2,500 metres;

18 "uncommitted capacity" means capacity that is:

19 (a) not contractually committed to a party;

20 (b) not conditionally assigned by means of an arm's length option  
21 agreement to a party;

22 (c) not demonstrably planned to be utilised on the basis of an  
23 approved utilisation plan;

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

29 "upstream crude oil operations" means the winning or obtaining of crude oil in  
30 Nigeria by or on behalf of a company on its own account for commercial

1 purposes and shall include any activity or operation related to crude oil that  
2 occurs up to fiscal sales point or transfer to the downstream sector;

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

8 "upstream petroleum operations" means upstream gas operations and  
9 upstream crude oil operations.

10 85. This Bill may be cited as 'Petroleum Industry Fiscal Short Title  
11 Framework Bill, 2016.

12 FIRST SCHEDULE

13 *Section 19, 26, 27 and 35*

14 *Capital Allowances*

15 *Interpretation*

16 For the purposes of this schedule, unless the context otherwise requires -

17 "CONCESSION" includes a petroleum prospecting licence (PPL), a  
18 petroleum mining lease (PML), any right, title or interest in or to petroleum  
19 in the ground and any option of acquiring any such right, title or interest;

20 "LEASE II" includes an agreement for a lease where the term to be covered  
21 by the lease has begun, any tenancy and any agreement for the letting or  
22 hiring out of an asset, but does not include a mortgage and all cognate  
23 expression including "LEASEHOLD"

24 INTEREST" shall be construed accordingly and:

25 (a) where, with the consent of the lessor, a lessee of any assets  
26 remains in possession thereof after the termination of the lease without a  
27 new lease being granted to him, that lease shall be deemed for the purposes  
28 of this schedule to continue so long as he or she remains in possession as  
29 aforesaid; and

30 (b) where, on the termination of a lease of any assets, a new lease of

1 that asset is granted to the lessee, the provisions of this Schedule shall have  
2 effect as if the second lease were a continuation of the first lease;

3 "QUALIFYING EXPENDITURE" or "QUALIFYING PETROLEUM  
4 EXPENDITURE" means, subject to the express provisions of this schedule,  
5 expenditure incurred in an accounting period, which is:

6 (a) capital expenditure (hereinafter called "qualifying plant  
7 expenditure") incurred on plant, machinery or fixtures;

8 (b) capital expenditure (hereinafter called "qualifying pipeline and  
9 storage expenditure") incurred on pipelines and storage tanks;

10 capital expenditure (hereinafter called "qualifying building expenditure"),  
11 other than expenditure which is included in paragraphs (a), (b) or (d) of this  
12 interpretation, incurred on the construction of buildings, or works of a  
13 permanent nature; or capital expenditure (hereinafter called "qualifying  
14 drilling expenditure") other than expenditure which is included in paragraph

15 (a) or (b) of this interpretation, incurred in connection with upstream  
16 petroleum operations in view on:

17 (i) the acquisition of, or of rights in or over, petroleum deposits;

18 (ii) searching for or discovering and testing petroleum deposits, or  
19 winning access thereto, or

20 (iii) the construction of any works or buildings which are likely to be  
21 of little or no value when the upstream petroleum operations for which they  
22 were constructed cease to be carried on; provided that for the purposes of this  
23 definition qualifying expenditure shall not include any sum which may be  
24 deducted under the provisions of section 19.

25 1. For the purposes of this interpretation of qualifying expenditure,  
26 where expenditure is incurred by a company before its first accounting period  
27 and such expenditure would have fallen to be treated as qualifying expenditure  
28 (ascertained without the qualification contained in the foregoing proviso) if it  
29 had been incurred by the company on the first day of its first accounting period,  
30 and

1 (i) of a company, the company owning any asset in respect of which  
2 it has incurred qualifying expenditure wholly and exclusively for the  
3 purposes of upstream petroleum operations carried on by it, disposes of that  
4 asset, the excess (hereinafter called "a balancing charge") of the value of that  
5 asset, at the date of its disposal, over the residue of that expenditure at that  
6 date shall, for the purposes of subsection (1)(a) of section 18, be treated as  
7 income of the company of that accounting period; Provided that a balancing  
8 charge in respect of such asset shall only be so treated if immediately prior to  
9 the disposal of that asset it was in use by such company for the purposes of  
10 the upstream petroleum operations for which such qualifying expenditure  
11 was incurred and shall not exceed the total of any allowances due under the  
12 provisions of this Schedule, in respect of such asset.

13 *Residue*

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

19 *Meaning of "Disposed of"*

20 1. Subject to any express provision to the contrary, for the  
21 purposes of this Schedule:

22 (a) a building, structure or works of a permanent nature is disposed  
23 of if any of the following events occur-

24 (i) the relevant interest is sold;

25 (ii) that interest, being an interest depending on the duration of a  
26 concession, comes to an end on the coming to an end of that concession; or

27 (iii) that interest, being a leasehold interest, comes to an end  
28 otherwise than on the company entitled thereto acquiring the interest which  
29 is reversionary thereon; or

30 (iv) the building, structure or works of a permanent nature are

1 demolished or destroyed or, without being demolished or destroyed, cease  
2 altogether to be used for the purposes of upstream petroleum operations carried  
3 on by the owner thereof;

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

#### 7 *Value of an Asset*

8 1. The value of an asset at the date of its disposal shall be the net  
9 proceeds of the sale thereof or of the relevant interest therein, or, if it was  
10 disposed of without being sold, the amount which, in the opinion of the  
11 Service, such asset or the relevant interest therein, as the case may be, would  
12 have fetched if sold in the open market at that date, less the Amount of any  
13 expenses which the owner might reasonably be expected to incur if the asset  
14 were so sold.

15 2. For the purpose of this paragraph, if an asset is disposed of in such  
16 circumstances that insurance or compensation monies are received by the  
17 owner thereof, the asset or the relevant interest therein, as the case may be, shall  
18 be treated as having been sold and as though the net proceeds of the insurance  
19 or compensation monies were the net proceeds of the sale thereof.

#### 20 *Apportionment*

21 1. Any reference in this Schedule to the disposal, sale or purchase of  
22 any asset includes a reference to the disposal, sale or purchase of that asset, as  
23 the case may be, together with any other asset, whether or not qualifying  
24 expenditure has been incurred on such last-mentioned asset, and, where an  
25 asset is disposed of, sold, or purchased together with another asset, so much of  
26 the value of the assets as, on a just apportionment, is properly attributable to the  
27 first mentioned asset shall, for the purposes of this Schedule, be deemed to be  
28 the value of, or the price paid for, that asset, as the case may be. For the purposes  
29 of this sub-paragraph, all the assets which are purchased or disposed of in  
30 pursuance of one bargain shall be deemed to purchased or disposed of together

1 notwithstanding that separate prices are or purport to be agreed for each of  
2 those assets or that there are or purport to be separate purchases or disposals  
3 of those assets.

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

8 *Part of an Asset*

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

14 *Exclusion of Certain Expenditure*

15 1. Subject to the express provisions of this Schedule, where any  
16 company has incurred expenditure which is allowed to be deducted under  
17 any provision (other than a provision of this Schedule), such expenditure  
18 shall not be treated as qualifying expenditure.

19 *Extension of the meaning of "in use"*

20 1. An asset in respect of which qualifying expenditure has been  
21 incurred by the owner thereof for the purposes of upstream petroleum  
22 operations carried on by it shall be deemed to be in use, for the purposes of  
23 such operations, between the dates hereinafter mentioned, where the board  
24 is of the opinion that the first use to which the asset will be put by that  
25 company incurring such expenditure will be for the purposes of such  
26 operations.

27 2. The said dates shall be taken to be the date on which such  
28 expenditure was incurred and the date on which the asset is in fact first put to  
29 use provided that where any allowance have been given in consequence of  
30 paragraph 1 of this Schedule and the first use to which such asset is put is not



1 for the purposes of such operations, all such additional assessments shall be  
2 made as may be necessary to counteract the benefits obtained from the giving  
3 of any such allowances.

4 *Asset Used or Expenditure Incurred Partly for the Purpose of*  
5 *Upstream Petroleum Operation*

6 1. The following provisions of this paragraph shall apply where either  
7 or both of the following conditions apply with respect to any asset:

8 (a) The owner of the asset has incurred in respect thereof qualifying  
9 expenditure partly for the purposes of upstream petroleum operations carried  
10 on by him and partly for other purposes;

11 (b) The asset in respect of which the owner has incurred qualifying  
12 expenditure thereof is used partly for the purposes of upstream petroleum  
13 operations carried on by such owner and partly for other purposes.

14 2. Any allowances which would be due or any balancing charges  
15 which would be treated as income if both such expenditure were incurred  
16 wholly and exclusively for the purposes of such upstream petroleum  
17 operations such asset were used wholly and exclusively for the purposes of  
18 such operations shall be computed in accordance with the provisions of this  
19 Schedule.

20 3. So much of the allowances and charges computed in accordance  
21 with provisions of sub-paragraph (2) of this paragraph shall be due or shall be  
22 so treated, as the case may be, as in the opinion of the Service is just reasonable  
23 having regard to all the circumstances and to the provisions of this Schedule.

24 *Disposal without Change of Ownership*

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

1 (a) Qualifying expenditure incurred by such owner in respect of  
 2 such owner in respect of such asset prior to the date of such disposal shall be  
 3 left out of account; but

4 (b) Such owner shall be deemed to have bought such asset  
 5 immediately after such disposal for a price equal to the residue of such  
 6 qualifying expenditure at the date of such disposal, increased by the amount  
 7 of any balancing charge or decreased by the amount of any balancing  
 8 allowance made as a result of such disposal.

9 TABLE I

10 FOR UPSTREAM PETROLEUM OPERATIONS

11 Annual Allowance	12 Rate Per Centum
13 First year	20
14 Second year	20
15 Third year	20
16 Fourth year	20
17 Fifth year	19

18 OTHER ALLOWANCES

19 Other allowances are provided for in section 27.

EXPLANATORY MEMORANDUM

This Bill seeks to establish a fiscal framework that encourages further investment in the Petroleum Industry whilst increasing accruable revenues to the Federal Government of Nigeria.

