Petroleum Profits Tax Act, Petroleum Industry Act and proposed amendments in Finance Act[[1]](#footnote-1)

[**Introduction**](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#Introduction)[**Comparative analysis**](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#Comparative%20analysis)

**Introduction**

Nigeria's Finance Act of 2022 (the Act) was signed into law on 28 May 2023.The Act has made changes to several fiscal and administrative laws, including:

* the Public Procurement Act;
* the Capital Gains Tax Act;
* the Companies Income Tax Act;
* the Customs, Excise Tariff, etc, (Consolidation) Act;
* the Corrupt Practices and Other Related Offenses Act;
* the Personal Income Tax Act;
* the Petroleum Profits Tax Act (PPTA); and
* the Stamp Duties Act.

One of the major aims of the Act is to improve the Nigerian fiscal regime. This article focuses on the changes made to the PPTA under the Act, some of which seek to align the PPTA with the provisions of the Petroleum Industry Act 2021 (PIA).

**Comparative analysis**

The Act amended section 2 of the PPTA by redefining "commission" to mean the Nigerian Upstream Petroleum Regulatory Commission (the commission), this amendment is to harmonise the PPTA with the PIA.

Notably, the petroleum industry currently operates two legal regimes. Holders of the Oil Mining Lease (OML) and Oil Prospecting License (OPL) are subject to the PPTA and are liable to pay tax at the rate of 85% or 65.75% of the chargeable profits.[(1)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#1)

However, under the PIA, the holders of the new Petroleum Prospecting License (PPL) and Petroleum Mining Lease (PML) are liable to pay hydrocarbon tax[(2)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60" \l "2) at the rate of:

* 30% of profits from crude oil for a PML[(3)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#3) in onshore and shallow water areas; and
* 15% of profits from crude oil for a PPL[(4)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60" \l "4) in onshore and shallow water areas.

The PIA allows the conversion from OPL to PPL and from OML to PML.[(5)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#5) Upon conversion, the holder of the PPL or PML will benefit from the new fiscal provisions and tax rate six under the PIA.[(6)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#6)

***Fund***  
The Act[(7)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#7) amended the PPTA so that where the commission has approved the decommissioning and abandonment of a field, the surplus or remaining balance of any fund, scheme, or arrangement (the fund) after the decommissioning and abandonment is subject to taxation under the PPTA. This provision by the Finance Act is specifically for OPL and OML License Holders. This amendment brings the PPTA in line with the provisions of section 233(12) of the PIA, which provides that any excess monies in the fund will be given back to the licensee or lessee.[(8)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#8) However, this amendment differs from the provisions in the PIA because the PIA does not state that the excess monies in the fund will be taxed under the PPTA, but rather that the excess shall be considered income for tax purposes and this is because the obligations for decommissioning and abandonment applies to holders of:

* OPLs;
* OMLs;
* PPLs; and
* PMLs.

***Accounting period***  
The Act[(9)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60" \l "9) also made minor alterations on the information that will be provided for each accounting period of the company for the purpose of calculating the Petroleum Profits Tax. These now include:

* a statement of accounts of its profits or losses;
* computation of its actual adjusted profit or loss and actual assessable profits of that period;
* the residues at the end of that period in respect of its assets;
* all qualifying petroleum expenditure incurred by it in that period;
* the values of any of its assets disposed of in that period; and
* the allowances due to it under the second schedule of the Act.

These alterations are in line with section 277 of the PIA.[(10)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#10) The PIA in section 277(1)(d) and (g) requires a holder to provide a schedule showing total production allowance from every field of its upstream operations relating to crude oil[(11)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#11) and the computation of chargeable tax for that period.[(12)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#12) However, these provisions are not reflected in the proposed Act.

***Audited accounts***  
Section 30[(13)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#13) of the Act requires every newly incorporated company that has not started bulk sales or disposal of chargeable oil to submit its audited accounts and returns within 18 months from its date of incorporation. The Act further states that, in the case of any other company, the audited accounts and returns must be submitted to the service within five months of the accounting period ending on 31 December of the following year. Provided that there is an interval between 31 December of the preceding year and the date on which the company commences the bulk sale or disposal of chargeable oil or condensate, the interval will be deemed to form part of the preceding period. This is in line with the provisions of section 270 of the PIA.[(14)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#14)

***Sanctions***  
Additionally, section 30[(15)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#15) of the Act also prescribes sanctions for companies that violate section 30 (2) or (3) of the PPTA by failing to provide the service with their audited financial statements and returns within the stipulated period. The Act penalises the violation with a fine of 10 million naira (approximately £10,265) for the first day the failure occurs, and a two million naira (approximately £2,053) fine for each succeeding day the failure persists, or any other amount that the minister of finance may specify in an order that is published in the *Gazette*.

The Act purports to amend the penalty for offences committed under the PPTA. It provides that, where no administrative penalty is prescribed, the person found to be in default will be liable to a fine of 10 million naira (approximately £10,265). This is a major increase from the former fee of ten thousand naira (approximately £9) under the PPTA. The Act also provides for an increase from two thousand (approximately £2) to two million naira (approximately £2,053) for each day the default continues.[(16)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#16) In addition, the Act proposes that, notwithstanding the provisions in section 51(1) of the PPTA, where a person is found guilty in a situation where there is no specified penalty, the defaulter will, upon conviction, pay a fine of 20 million naira (approximately £20,526) or any other amount the minister of finance may prescribe by order or a six-month sentence in prison, or both. The Act also provides that a person is liable to the administrative penalty as earlier stated in section 30 of the PPTA as proposed by the Act[(17)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60" \l "17) if they disregard:

* the requirements of a notice served on them under the Act without good reason;
* the provisions of section 30 of the Act;
* a summons served on them under the Act;
* a question lawfully put to them after they attend a summons or fail to answer any question lawfully put to them; or
* the requirements of a return required to be submitted under sections 30 or 33 of the PPTA.

The Act also provides that any offence committed under section 30s subsections (1) and (3) of the PPTA will be considered to have occurred in Nigeria.[(18)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#18)

The Act intends to amend the penalties for making false statement of accounts, statements and returns by prescribing an increased fine of 15 million naira (approximately £14,962) and 1% of any tax undercharge or misappropriations made by the defaulter,[(19)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#19) six months' imprisonment or both[(20)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#20) as opposed to one thousand naira (£1) and double the amount of tax specified by the PPTA for the accounting period.

The Act also deleted section 55 of the PPTA which states the penalties for offences by authorised and unauthorised persons. It prescribes these modifications because section 44 of the Federal Inland Revenue Service (Establishment) Act 2007 already has sufficient and superseding provisions that are more pertinent considering redundant offenses and penalties.[(21)](https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60#21)

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**Endnotes**

(1) Section 21 (1) and (2) of the PPTA.

(2) Hydrocarbon tax applies to crude oil, field condensates and natural gas liquids derived from associated gas and produced in the field upstream of measurement points.

(3) Section 267 (a) of the PIA 2021.

(4) Section 267 (b) of the PIA 2021.

(5) Section 92 (1) od the PIA 2021.

(6) Section 92 (20) of the PIA 2021.

(7) Section 15 of the Finance act 2023 which amended Section 10 of the PPTA.

(8) Section 233 (12) of the PIA 2021.

(9) Section 17 of the Finance Act 2023 which amended Section 30 of the PPTA was amended.

(10) PIA 2021.

(11) Section 277 (1) (d) of the PIA 2021.

(12) Section 277 (1) (g) of the PIA 2021.

(13) Section 17 of the Finance Act 2023 which amended Section 30 (2) of the PPTA.

(14) PIA 2021.

(15) Section 17 of the Finance Act which amended Section 30 (4) of the PPTA.

(16) Section 18 of the Finance Act 2023 which amended Section 51 (1) of the PPTA.

(17) Section 18 of the Finance Act 2023 which amended Section 51 of the PPTA.

(18) Section 18 of the Finance Act 2023 which amended Section 51 (3) and (4) of the PPTA.

(19) Section 18 of the Finance Act 2023 which amended Section 52 of the PPTA.

(20) Section 19 of the Finance Act 2023 which amended Section 53 of the PPTA.

(21) Section 20 of the Finance Act 2023 which deleted Section 55 of the PPTA.

1. [Streamsowers & Köhn](https://www.lexology.com/contributors/streamsowers-and-kohn), ‘Petroleum Profits Tax Act, Petroleum Industry Act and proposed amendments in Finance Act’ (2023) [*Streamsowers and Köhn*](https://www.lexology.com/contributors/streamsowers-and-kohn) *& Co* <https://www.lexology.com/library/detail.aspx?g=f6b0bc1d-d5b5-47fd-83c5-ebb70f908d60> accessed May 22, 2024.

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