



FEDERAL INLAND REVENUE SERVICE

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INFORMATION CIRCULAR

NO:2023/09

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Subject: CLARIFICATION ON FINANCE ACT, 2023 AMENDMENT TO PETROLEUM PROFITS TAX ACT.

This circular is issued for the information and guidance of the general public, taxpayers, tax officials and tax practitioners in line with the provisions of the Finance Act, 2023 on the administration of the Petroleum Profits Tax Act.

1.0 Introduction

This information circular is issued to provide clarification on the amendments made in the Finance Act, 2023.

2.0 Legislative Framework

This Circular will be administered in line with the provisions of Petroleum Profits Tax Act (PPTA), 2004 (as amended), Deep Offshore and Inland Basin Production Sharing Contract Act (DOIBPSCA), 2004 (as amended) and Petroleum Industry Act (PIA), 2021.

3.0 The Commission

The Nigerian Upstream Petroleum Regulatory Commission, "The Commission" established by the Petroleum Industry Act, 2021 is responsible for the technical and commercial regulation of upstream petroleum operations. This Commission is the technical and commercial regulator of companies taxed under the PPTA.

4.0 Contributions to the Abandonment and Decommissioning Fund

Section 233 of the PIA mandates every lessee and licensee to set up, maintain and manage a decommissioning and abandonment fund to be exclusively used to pay for decommissioning and abandonment costs. It also provides that the yearly contributions to the fund will be tax deductible expense.

In line with this provision, Section 10 of PPTA was amended to provide that contributions made to a decommissioning and abandonment fund approved by the Commission will be an allowable deduction for tax purposes.

4.1 Treatment of Contributions to the Abandonment and Decommissioning Fund

Claims of yearly contributions to the Fund will be tax deductible expense where the following conditions are met:

- a. Submission of a copy of the letter informing the Commission or Authority, as the case may be, of the Fund;
- b. The Fund is held in the form of an escrow account by a financial institution that is not an affiliate or related party to the company and the Fund is accessible by the Commission or the Authority, as the case may be, under the provisions of the escrow agreement;
- c. No disbursement is made from the Fund, except for the purpose of decommissioning and abandonment; and
- d. Submission of a copy of the yearly Bank Statement of the Fund with the tax returns to the Service.

4.2 Tax Status of the Contribution to Decommissioning and Abandonment Fund

- a. Any cost disbursed from the Fund to execute decommissioning and abandonment obligation is not an allowable expense for tax purpose.
- b. Where the balance in the Fund is insufficient to carry out the decommissioning and abandonment obligation, the additional amount incurred by the company for that purpose is an allowable expense for tax purpose.
- c. Any credit balance in the Fund after decommissioning and abandonment has been carried out is an income for tax purpose and will be subject to tax accordingly.

5.0 Determination of Revenue for Petroleum Profits Tax using Fiscal Oil Price

Finance Act, 2023 provides clarity on the Commission as the relevant government agency to establish the Fiscal Oil Price per barrel for every crude oil stream in Nigeria at measurement point on an export parity basis. The Fiscal Oil Price replaces the Posted Price.

The fiscal oil price is the government benchmark fiscal price for crude oil in Nigeria. As such, all companies are required to make adequate disclosures on crude oil sold or disposed based on actual price pursuant to Section 9 (1)(a) and(b) of PPTA and government benchmark fiscal price.

Thus, in every accounting period, the applicable value of chargeable oil sold or disposed shall be the higher of the crude oil revenues determined by

actual price and crude oil revenues based on government benchmark fiscal price established by the Commission at measurement point on export parity basis.

The fiscal oil price shall apply to the sale and disposal of all chargeable oil and is not limited to exported chargeable oil.

Where a company sells or disposes its chargeable oil through another company, the chargeable oil sold or disposed shall be deemed to have been sold or disposed by that first company.

6.0 Preparation and Delivery of Accounts and Particulars

6.1 Section 30 provides that every company engaged in petroleum operations shall for each accounting period of the company file a return of its actual tax and the following particulars -

- a) a statement of accounts of its profits or losses;
- b) computation of its actual adjusted profit or loss and actual assessable profits of that period;
- c) a schedule showing-
 - i. the residues at the end of that period in respect of its assets,
 - ii. all qualifying petroleum expenditure incurred by it in that period,
 - iii. the values of any of its assets disposed of in that period and,
 - iv. the allowances due to it under that schedule for that period
- d) a computation of its actual chargeable profits of that period;
- e) a statement of amounts repaid, refunded, waived or released to it, referred to in Section 10(2) of PPTA, during that period;
- f) duly completed self-assessment form attested to by a principal officer of the company; and
- g) evidence of payment of the final instalment.

6.2 A company which is, or has been engaged in petroleum operations, is required to file with the Service, its profit or loss account computed on actual facts and attested to by a principal officer, not later than five (5) months after the expiration of its accounting period.

6.3 A company that is yet to commence bulk sales or disposal of chargeable oil is required to file with the Service its audited account and tax returns as follows -

- (a) for a new company, within eighteen (18) months of incorporation; and
- (b) for an existing company, not later than five (5) months after the expiration of its accounting period.

Note: Where there is an interval between December 31st and the date for commencement of bulk sale, the interval forms part of the preceding period.

6.4 Penalty for late filing

Where a company fails to file its returns within the stipulated time, it shall be liable to penalty for late filing of ₦10,000,000 on the first day in which the failure occurs and ₦2,000,000 for each and every day the default continues or any other sum prescribed by the Minister of Finance by order published in the Federal Government Gazette.

7.0 Penalty for Offences not Specified in the Act.

7.1 Where the Act does not specifically state the penalty for an offence, the following penalties apply:

- a. **Administrative Penalty:** The person will be liable to an administrative penalty of ₦10,000,000 in the first instance of default or failure to comply.
- b. **Continuing Default:** If the default or failure to comply continues beyond the first instance or a time stipulated in the law or Regulations, the person will be liable to a further administrative penalty of ₦2,000,000 for each day the default or failure to comply continues.
- c. **Conviction by a Court of Law:** Irrespective of (a) and (b) above, where a person is convicted by a court of law for an offence under the Act or Regulations, such person will be liable to a fine of ₦20,000,000 or six (6) months imprisonment or both fine and imprisonment.

In either case, the Minister of Finance has the authority to prescribe by order a different sum as fine or penalty.

7.2 Where a person -

- a) does not comply with the requirements of a notice served under the Act;
- b) does not comply with the requirements of preparation and delivery of account and particulars pursuant to section 30 of PPTA;
- c) without sufficient cause does not attend or answer a notice or summons served on him under the PPTA or having attended does not answer questions lawfully put to him; or
- d) does not submit any return required to be submitted under Section 30 or 33 of the PPTA,

such person shall be liable to the administrative penalty stated in paragraph 7.1 (a) & (b) above and upon conviction be liable to fine & penalty stated under paragraph 7.1 (c) above.

7.3 All offences in respect of which a penalty is provided for shall be deemed to have occurred in Nigeria.

8.0 Penalty for making incorrect accounts, etc.

Section 52 of the PPTA states the penalty applicable where a person makes incorrect accounts or gives incorrect information without reasonable cause in the following circumstances -

- i. prepare and submit any incorrect accounts by omitting or understating any profits or overstating any losses of which is required under the Act to make up accounts;
- ii. Prepares and submit any incorrect schedule or statement required under Section 30 of the Act by overstating any expenditure or other sums; or by omitting or understating any amounts repaid, refunded, waived or released; or
- iii. provide any false or incorrect information in relation to any matter or thing affecting the liability to tax.

Where these occur the following penalty will apply:

- a) an administrative penalty the higher of N15,000,000 and 1% of the amount of tax that has been undercharged due to the incorrect account, schedule, statement, or information, or by virtue of the incorrect information being accepted as correct.
- b) in addition to the penalty imposed above, such person shall pay the appropriate tax that should have been charged if the information provided was correct.

8.1 The Service may compound any offence under the Act by accepting a sum of money not exceeding the maximum fine specified for the offence and shall issue an official receipt for any money so received.

9.0 False Statements and Returns

9.1 Section 53(1)(a) of PPTA has been amended by introducing the words- **fraudulently alters or uses** to further describe the means by which false statements or returns can be prepared and filed for the purpose of obtaining tax deduction, rebate, reduction or repayment.

Additionally, the penalty under section 53 of PPTA with respect to submission of false statements and returns is revised as follows:

- a) an administrative penalty of the higher of N15,000,000 and 1% of the amount of tax the person is liable to in the accounting period in which the act or omission occurs.
- b) Where there is a conviction by a court of Law, irrespective of subparagraph 9.1 (a) and (b) above, the person shall be liable to a fine of the higher of N15,000,000 and 1% of the amount of tax payable in the accounting period which the offence was committed or; six (6) months imprisonment or both fine and imprisonment.

In addition to the penalty imposed above, such person shall pay the appropriate tax that should have been charged if the act or omission did not occur.

10. 0 Amendment or Revision of the Circular

The Service may, at any time, withdraw or replace this Circular or publish an amended or updated version.

11.0 Enquiries

All Enquiries on any aspect of this publication should be directed to:

Circular should be directed to the:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House,
15, Sokode Crescent, Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
26, Sokode Crescent,
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Or

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