FEDERAL INLAND REVENUE SERVICE
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Information Circular
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Subject: CLARIFICATION ON SUNDRY FISCAL PROVISIONS AND OTHER RELATED MATTERS UNDER THE PETROLEUM INDUSTRY ACT

This information circular is issued in line with Section 8 of the Federal Inland Revenue Service (Establishment) Act, 2007 (as amended), Section 304(1) of the Petroleum Industry Act, 2021 and other relevant tax laws for the information and guidance of the general public, taxpayers, tax officials, and tax practitioners on the provisions of Petroleum Industry Act, 2021. This circular should be read and applied together with other related circulars issued by the Service pursuant to the Petroleum Industry Act.

1.0 Introduction

The Petroleum Industry Act (the Act) requires that all companies in the petroleum industry to transit to the full provisions of the Act. This requirement raises conversion, transition, compliance and sundry issues which need to be clarified for the smooth administration of the Act. This Information Circular aims at providing clarification and direction on sundry issues of the fiscal provisions of the Act and other related matters.

2.0 Scope:

This Circular will be applicable to:

a. Transited companies

i. Existing holders of Oil Prospecting Licences (OPLs) and Oil Mining Leases (OMLs);

1. upon voluntary conversion to Petroleum Prospecting Licences (PPLs) and Petroleum Mining Leases (PMLs);

2. whose licences or leases expired and were renewed under the Act.

ii. Existing marginal field operators upon their conversion to Petroleum Prospecting Licences or Petroleum Mining Leases pursuant to the provisions of the Act.

iii. Reclassified frontier acreages to either PMLs or PPLs.

b. Companies with new licences or leases granted under the Act

Companies holding Petroleum Prospecting Licences (PPLs) and Petroleum Mining Leases (PMLs) granted after the effective date of the Act which include:

i. Petroleum Prospecting Licences and Petroleum Mining Leases granted after a licensing round conducted by the Commission;

ii. Petroleum Prospecting Licences granted on new acreages selected pursuant to a relinquishment exercise carried out by a lessee or licensee; and

iii. Any other category of licence or lease that may be granted under the Act.

3.0 Applicability of Cost Price Ratio (CPR) limit

Any company, in ascertaining its chargeable profit for an accounting period, will subject its allowable costs (operating and capital cost), to the Cost Price Ratio (CPR) limit. The costs that are subjected to the CPR limit are those that are eligible for deduction under Hydrocarbon Tax, except for costs and allowances listed in paragraph 3.2 of this Circular.

The CPR limit for any accounting period is 65% of the Gross Revenues for that period determined at the upstream measurement points.

The Gross Revenue for CPR limit is the aggregate of all revenue derived from the proceeds of sales and value of disposed:

a. Crude oil,
b. Field condensate, and
c. Liquid natural gas liquids derived from associated gas and produced in the field upstream of the measurement point.

3.1 Balancing Charge

Balancing Charge will form part of the income to be charged to Hydrocarbon Tax but shall not be included in the determination of the Gross Revenue for CPR limit.

3.1.1 Illustration 1

Company ABC E&P Ltd has the following stream of income for 20XX financial year:

DESCRIPTION	AMOUNT (USD)
Crude oil sold (50,000 bbls @$60 per bbl)	3,000,000
Liquid Natural Gas Liquid sold	1,500,000
Field Condensate sold	2,000,000
Gas sales	2,800,000
Finance and other income	450,000
Balancing Charge	500,000

Treatment

The Gross Revenue of ABC E&P Ltd will be determined as follows:

DESCRIPTION	AMOUNT (USD)
Crude oil sold (50,000 bbls @$60 per bbl)	3,000,000
Liquid Natural Gas Liquid sold	1,500,000
Field Condensate sold	2,000,000
Gross Revenue	**6,500,000**

3.2 Costs and Allowances Exempted Under the Cost Price Ratio Limit

In applying the CPR limit in any accounting period, the following eligible deductions are excluded:

a. Rent incurred by the company on PPLs & PMLs (Concession Rentals)

b. Royalty incurred and paid

c. Host Community Fund contribution incurred

d. Environmental Remediation Fund contribution

e. Niger Delta Development Commission Fund incurred

f. Production allowances under the sixth schedule.

3.3 Implication of Cost Price Ratio Limit

The application of the cost price ratio may result into any of the following three scenarios:

A. Total eligible cost is greater than the CPR limit
B. Total eligible cost is less than the CPR limit

C. Total eligible cost is equal to the CPR limit

A. Where total eligible cost is greater than the CPR limit, the excess cost may be carried forward for deduction in subsequent years of assessment provided that the total costs to be deducted shall not exceed the annual cost incurred and shall not exceed the CPR limit. However, upon the termination of upstream petroleum operations, any excess cost shall not be deductible for computing Hydrocarbon Tax.

3.3.1 Illustration 2

Company XYZ Ltd has the following information relating to operation for 20XX financial year:

DESCRIPTION	AMOUNT (USD)
Gross Revenue	2,500,000
Costs	
Royalty	300,000
1st & 2nd Appraisal well Costs	800,000
NDDC	200,000
Capital Allowance	900,000
Production Allowance	270,000
Total Costs	**2,470,000**

XYZ Ltd

Computation of CPR limit for 20XX Accounting Year

	DESCRIPTION	AMOUNT (USD)	AMOUNT (USD)
	Gross Revenue		2,500,000
	CPR Limit 65% of Gross Revenue	1,625,000	
	Total Allowable Costs	**2,470,000**	
Less:	**Exempted Costs**		
	Royalty	300,000	
	NDDC	200,000	
	Production Allowance	270,000	770,000
	Net Total Allowable Costs & allowances to be subjected to CPR limit	**1,700,000**	
	Maximum Allowable Costs:		
	The Lower of :		
	Net Total Costs to be subjected to CPR	1,700,000	
	and		
	CPR limit @ 65% of Gross Sales	1,625,000	1,625,000
	Excess Costs Cfwrd	75,000	
	Chargeable Profit		**105,000**

B. Where total eligible cost is less than the CPR limit, the CPR limit will not be applicable and all eligible costs are allowed for deduction.

3.3.2 Illustration 3

Company ABC Ltd has the following information relating to operation for 20XX financial year:

DESCRIPTION	AMOUNT (USD)
Gross Revenue	2,000,000
Costs	
Royalty	300,000
1st & 2nd Appraisal well Costs	200,000
NDDC	200,000
Capital Allowance	450,000
Production Allowance	270,000
Total Costs	**1,420,000**

Treatment

ABC Ltd

Computation of CPR limit for 20XX Accounting Year

	DESCRIPTION	AMOUNT (USD)	AMOUNT (USD)
	Gross Revenue		2,000,000
	CPR Limit 65% of Gross Revenue	1,300,000	
	Total Allowable Costs	**1,420,000**	
Less:	**Exempted Costs**		
	Royalty	300,000	
	NDDC	200,000	
	Production Allowance	270,000	770,000
	Net Total Allowable Costs to be subjected to CPR limit	**650,000**	
	Maximum Allowable Costs:		
	The Lower of :		
	Net Total Costs to be subjected to CPR	650,000	
	and		
	CPR limit @ 65% of Gross Sales	1,300,000	650,000
	Excess Costs Cfwrd	-	
	Chargeable Profit		**580,000**

C. Where the total eligible costs is equal to the cost price ratio limit, the company will claim the total eligible costs.

3.4 Application of CPR Limit to Transited Companies

Where a transited company brought forward unrelieved loss and unrecouped capital allowances from PPTA regime, the two costs will be allowed as a deduction, but the provisions of CPR limit will apply to the unrecouped capital allowance. However, where the transited companies are PSC companies, any unrecouped Petroleum Investment Allowances and Investment Tax Allowances brought forward shall be excluded from the total unrecouped capital allowances eligible for deduction under the Act. The net unrecouped capital allowances will be subjected to the CPR limit.

3.5 Tax Treatment of Exempted Costs and Allowances in CPR Limit

In computing the total eligible costs after CPR limit, where the costs and allowances exempted from CPR limit is higher than 65% of the Gross Revenue, the sum of exempted costs and allowances will be recouped to the extent possible from Gross Revenue in that accounting period.

Where it exceeds 100% of the Gross Revenue, the excess will be carried forward and relieved in the subsequent accounting period and be treated as part of the exempted items of the subsequent year.

4.0 Other Non-Deductible Expenses Under the Act

In addition to deductions not allowed under section 264 of the Act, the following expenses are not tax deductible:

a. Penalty of $3.50 per MMBTU prescribed in the Act for failure to deliver the volume of natural gas to wholesale customer at a location indicated by the Domestic Gas Aggregator pursuant to section 110(8) of the Act.
b. Payment of assignment fee as prescribed by the Commission for the assignment of interest in accordance with section 95 (12) of the Act.
c. Any other penalty or non-allowable costs as may be stated in the Act.

5.0 Tax Treatment of Operator's Fee to Appointed Agent

Pursuant to section 98 of the Act, where a licence or lease is revoked and the Minister appoints any company or persons as an interim operator to ensure continuation of the petroleum operations, the Commission will be responsible for carrying out the necessary tax obligations of filing the necessary Hydrocarbon Tax and Companies Income Tax returns and pay the appropriate taxes in respect of the PML or PPL.

The Commission shall also withhold tax and VAT from the management or service fees payable to the appointed agent and remit the same to the Service.

The appointed agent will file Companies Income Tax on the service fee earned and pay the appropriate taxes.

6.0 Education Tax Determination Under the Act

All companies are required to compute and pay Tertiary Education Tax (TET) in each of its accounting periods. The tax is applicable on the assessable profits determined under the Companies Income Tax at the rate of 2.5%.

The TET is not an allowable deduction in the computation of either the Companies Income Tax or Hydrocarbon Tax. The procedure for filing of TET returns and payment of the tax is contained in FIRS Information Circular No. 2022/11 on Administration of the Tertiary Education Tax, published on 11th April 2022.

6.1 Illustration 4:

ABC E&P Nig. Ltd has an assessable profit of $100,000,000 in its Companies Income Tax computation for 20x0 Year of assessment. What is its TET in that year?

ABC E&P NIG. LTD
Computation of TET Liability

TET Rate X Assessable Profit

$$\frac{2.5}{100} \times 100,000,000 = \$2,500,000$$

7.0 Production Allowance

The Act provides allowance for crude oil production, condensate and liquid natural gas liquid.

7.1 Production Allowance for Transiting Companies

Production Allowance will be granted to converted OMLs at conversion and subsequent renewals as follows:

a. It will be computed per lease

b. The lower of US$2.5 per barrel and 20% of the fiscal price on crude oil, condensate and liquid natural gas liquid produced per lease in each accounting period.

7.1.1 Illustration 5

BZX E&P Limited holds two converted Oil mining lease with the following data for 20xx Accounting year:
PML A= Production of 15,000 barrels per day
PML B= Production of 7,000 barrels per day.
Assume an uninterrupted production of 360 days and average fiscal oil price of $60 per barrel in that accounting year.

Treatment

BZX E&P Limited

Computation of Production Allowance for 20xx Year of Assessment

DESCRIPTION		PML A BBLS	PML B BBLS
Production:	PML A (15,000*360)	5,400,000	
	PML B (7,000*360)		2,520,000
Oil Price		$60	$60
the lower of:			
$2.50 per barrel or $12 (i.e 20% of $60)		$2.5	$2.5
		US$	US$
Production Allowance ($2.50 * Production)		13,500,000.00	6,300,000.00

7.2 Production Allowance for Companies with Licences / Leases Granted After the Commencement of the Act

All companies with licences and leases granted after the commencement of the Act are also entitled to production allowance on crude oil, condensate and liquid natural gas liquid produced per field in each accounting period.

The allowance is the addition of:

a. Lower of US$8 per barrel and 20% of the fiscal oil price per barrel, up to a cumulative maximum production of:
   i. Onshore: 50 million barrels
   ii. Shallow water: 100 million barrels
   iii. Deep offshore and frontier basin: 500 million barrels

   The above shall apply from commencement of production.

b. Lower of US$4 per barrel and 20% of the fiscal oil price, for any barrel exceeding the maximum cumulative production on each operational terrain stated above.

7.2.1 Illustration 6

BZX E&P Limited holds an onshore PML with the following data for 20XX Accounting year.

Field A= Production 15,000 barrels per day (cumulative production of 48 million barrels from inception).

Field B= production of 7,000 barrels per day (cumulative production of 35 million barrels from inception).

Assume an uninterrupted production of 360 days and average fiscal oil price of $60 per barrel in that accounting year.

Treatment

BZX E&P Limited

Computation of Production Allowance for 20XX Years of Assessment

DESCRIPTION	FIELD A BBLS	FIELD B BBLS
Production: Field A (15,000*360); Field B (7,000 * 360)	5,400,000	2,520,000
Cummulative production brought forward	48,000,000	35,000,000
Total Cummualtive Production from inception to date	53,400,000	37,520,000
Maximum Cummulative Prod. For onshore	50,000,000	50,000,000
Excess Cummulative Porudtcion - (b)	3,400,000	-
Production within Maximum Threshold (5,400,000 bbl-3,400,000bbl) (a)	2,000,000	2,520,000
Oil Price	$60	$60
Production within maximum threshold:		
the lower of:		
$8 per barrel and $12 (i.e 20% of $60) upto maximum production of 50m bbls	$8	$8
Excess cummulative production thereafter:		
the lower of:		
$4 per barrel and $12 (i.e 20% of $60) upto maximum production of 50m bbls	$4	$4
	US$	US$
Production within maximum threshold:		
ProductionAllowance ($8 * production (a))	16,000,000	20,160,000
Excess cummulative production thereafter:		
ProductionAllowance ($4 * production (b))	13,600,000	-
Total Production Allowance	29,600,000	20,160,000

7.3 Claim of Production Allowance

The Production Allowance is only claimable in the determination of Hydrocarbon Tax. Production allowance is not allowable for deduction in determination of Companies Income Tax payable.

7.4 Further Documentation for the Claim of Production Allowance

Any company that has claimed production allowance is required to file its tax returns for any accounting period, with a schedule showing cumulative production and total production in that accounting year from each field under its licence or lease. The schedule should show crude oil, condensate and liquid natural gas liquid produced separately.

8.0 Tax Deduction of Contribution to Host Community Development Trust Fund

The Act provides for the establishment of the Host Community Development Trust Fund and an annual contribution to the Fund of 3% of the actual operating expenditure of the preceding accounting year of a holder of PML or PPL. The annual contribution to the trust fund is an allowable expense for tax purpose.

8.1 Treatment of Expense Incurred in Restoring Disruption to Petroleum Activities

Where there is a disruption to production activities in a year and the disruption is caused by natural or technical occurrence pursuant to section 257 (2) & (3) of the Act, the amount incurred in repairing petroleum and designated facilities or restoring production activities in that year is an allowable expense for tax purpose.

However, where the disruption is caused by an act of vandalism, sabotage or other civil unrest related to the host community, the amount incurred to repair petroleum and designated facilities or in restoring production activities will be deducted from the Host Community Fund.

In the case where the costs of repairs to the damaged facilities or restoring disruption caused by activities related to the host community in a year is higher than the contribution payable by the company to the Host Community Development Trust Fund in that accounting period, the excess will be allowable for tax deduction as part of the company's repairs expense.

However, where a company fails to make a deduction of the costs of repairs to damaged facilities or restoration of disruption caused by activities related to the host community in a year for whatever reasons, the amount not deducted shall not be charged to tax as an allowable expense.

8.2 Submission of Schedule of Expenses Incurred on Restoring Disruption to Petroleum Activities

Any company that has claimed deduction of expenses on repair of damaged facilities and restoration of disruption of production activities in its tax returns shall submit the following with the tax returns:

a. A signed copy of the report of disruption of activities during the year, as submitted to the Commission.

b. Schedules of the actual cost incurred on repairs, replacement or restorations of the damaged facilities.

9.0 Abandonment and Decommissioning Fund

Section 233 of the Act requires that every PML and PPL holder, as well as companies in midstream petroleum operations, establish and maintain a decommissioning and abandonment fund and make yearly contributions to the fund. The yearly contributions to the fund will be tax deductible expense.

9.1 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.

d. Submission of a copy of the yearly Bank Statement of the Fund with the tax returns.

9.2 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 purposes.

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.

10.0 Divestment of Streams of Petroleum Operations

Any company transferring its petroleum operation in any of its streams (upstream, midstream or downstream) to another company will be required to obtain the direction (*"letter of no objection"*) of the Service and comply with all relevant tax rules relating to reorganisation. For the transfer of an upstream operation to another company, the companies shall comply with the provisions of Section 271 of PIA. Whereas, divesting or reorganisation of other streams of petroleum operations shall be consistent with Section 29(9-12).

10.1 Exemption of Transiting Companies from Certain Taxes on Reorganization

In compliance with Section 302 (3) of the Act, where a transiting company under section 93(6)(b) and 93(7)(b) re-organises its operations by transferring its midstream or downstream operations, as well as its related assets to a new company established by it for those purposes, the following incentives provided in section 302(3) of PIA will be applicable to the transiting company:

a. Exemption from stamp duties, and

b. Exemption from capital gains tax

Consequently, the share capital of any new company set up for the purpose of taking over the business of the other streams, as well as other dutiable instruments relating to the re-organisation will not be subject to stamp duties.

Also, assets of the existing companies transferred at Tax Written down value to any related company taking over the operations of the other streams will not be subject to capital gains tax.

However, the above exemptions are restricted to companies that:

a. Are transiting companies under section 93(6)(b) and 93(7)(b)

b. Transfer the operations of the streams to related parties.

10.2 Application of Section 29(9-12) of Companies Income Tax Act (CITA) and Section 271 of Petroleum Industry Act

Where an existing upstream petroleum company divests or transfers its midstream or downstream operations, related segments, or related assets of the business to a related company (re-organisation), the provision of Section 29(9) of CITA will be applicable. Similarly, the provision of section

271 of PIA will be applicable to the transfer of an upstream operation. However, these provisions will not apply to any transfer to an unrelated company.

In both instances, the provisions of paragraph 4.0 of FIRS Information Circular No.2021/10 on Clarification on Commencement and Cessation Rules, and Business Reorganisation, published on 3rd June 2021, shall be applicable, except that in the case of upstream operations, the companies must have been related for a consecutive period of not less than 3 years prior to the date of re-organisation.

10.3 Application of the Stamp Duties Act

Where the companies have obtained a letter of no objection from the Service prior to the reorganisation, dutiable instruments relating to the reorganisation is exempt from stamp duties, in line sections 104 and 105 of the Stamp Duties Act, subject to full compliance with the requirements of the Act.

11.0 Application of the Tax Holiday Provided under Section 302(6)

Section 302(6) of PIA provides incentives under Section 39 of CITA for companies that engage in domestic midstream petroleum operations, downstream gas operations or large-scale gas utilization industries. The incentives include a tax holiday, which allows such companies to claim 3 years and an additional 2 years tax holiday provided for downstream gas utilisation in Section 39 of the CITA. The tax holiday applies only to the midstream petroleum operation, downstream gas operation and large-scale gas utilization.

It should be noted that:

a. The incentive is only claimed once by the same company in its lifetime;
b. The incentive does not apply to any company that has claimed an incentive for trade or business of gas utilisation under any law in Nigeria, including the Petroleum Profits Tax Act or the incentives under the Industrial Development (Income Tax Relief) Act.
c. In schemes of reorganisation, restructuring, buy-back or other similar schemes, including that carried out under Section 302(3) of the Act, where a new company is formed out of a company that has already enjoyed the incentive, or the midstream petroleum operation, downstream gas operation or large-scale gas utilisation business is transferred to another company, then that new or acquiring company will not be entitled to the incentive.

d. In the case of Integrated Strategic Project (ISP), the midstream petroleum operation, downstream gas operation and large-scale gas utilisation business of a company engaged in ISP will enjoy the tax holiday contained in Section 39 of CITA.
e. However, where a company engaged in ISP has claimed similar incentives for the entire company under PPTA or any other law, the midstream petroleum operation, downstream gas operation or large-scale gas utilisation business cannot benefit from the incentives provided under section 39 of CITA.

11.1 Additional Incentive for Investors in Gas Pipeline

In addition to the 3 to 5 years tax holiday and other incentives listed under Section 39 of CITA, an investor in gas pipeline is also entitled to an additional tax-free period of five (5) years at the expiration of the tax-free period granted under section 39 of CITA. The tax holiday is applicable to only the gas transportation business and not to the general business of the company.

For the purpose of this incentive and in line with Section 135 of the Act, an investor in gas pipeline is a person that is granted and issued a gas transportation pipeline licence by the Nigerian Midstream and Downstream Petroleum Regulatory Authority, with the exclusive right to own, construct, operate and maintain a gas transportation pipeline within a route, for its own account and with third party access provisions, or as a common carrier.

A company that has incurred capital expenditure in gas pipeline exclusively for its own account or business, on which third party access is not allowed, or which is not used as a common carrier, is not entitled to the additional incentive.

In claiming the additional incentive, an investor must be licenced under Section 135 of the Act and demonstrate its compliance with section 136 of the Act on third party or open access.

Note:

a. The company must keep separate books of account and file separate tax returns for the gas transportation business
b. Third party access and common carrier is as defined under Section 318 of the Act.

12.0 Restriction on Claim of Capital Allowances under CITA by Upstream Petroleum Companies

The claim of capital allowances under CITA will be in line with the Fifth schedule of the Act, therefore the restriction on the claim on capital allowance under the Second Schedule of CITA will not be applicable to Upstream Petroleum companies.

13.0 Tax Implication of Integrated Strategic Project (ISP)

Where a company opts for an Integrated Strategic Project, such company is required to keep appropriate books of account for the upstream, midstream and downstream operations. The annual tax returns of the operation must contain a separate computation for Hydrocarbon Tax for the upstream operation and a consolidated Companies Income Tax for the Integrated Strategic Project.

Where the downstream and midstream operations are enjoying incentives provided for under section 39 of CITA, the Companies Income Tax of the upstream operations shall be computed and filed separately from the Downstream and Midstream Companies Income Tax.

Crude oil, field condensate and liquid natural gas liquid disposed of or transferred to the midstream operations in any accounting year will be fiscalised in the upstream operations for tax purposes using the fiscal oil price advised by the Commission. Transfer of goods, services, properties, assets, intangibles and loans among the business segments should be consistent with arm's length principle and will be required to comply with the Transfer Pricing Regulations.

14.0 OTHER RELATED MATTERS

a. Default in payment of taxes may lead to revocation of licences or leases by the Minister of Petroleum Resources upon recommendation made by the Commission in line with section 96 (1) (d).
b. Failure of non-defaulting parties to take responsibility for the payment of taxes of the defaulting parties may also lead to revocation of licence pursuant to section 99(6) (a) of the Act.
c. In fulfillment of the Act, details of Assignment or transfer of interest pursuant to section 95(13) of the Act will be disclosed to the Service.

15.0 Amendment or Revision of the Circular

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

16.0 Enquiries

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

The Executive Chairman
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