

NAMIBIAN FISCAL REGIME

The fiscal regime applying to the petroleum industry in Namibia is anchored in law (limited discretion) and consists of a combination of Petroleum Income Tax (PIT) under the Petroleum (Taxation) Act (PTA), the administrative provisions as contained in the Income Tax Act, and royalties levied on sales under the Petroleum Act:

- Petroleum Income Tax (PIT) under the Petroleum (Taxation) Act 3 of 1991 (the "PTA").
- The Petroleum (Exploration and Production) Act 2, 1991 - which sets out the Royalty levied on sales (as well as the level of application fees and annual area rental charges);
- The Petroleum (Taxation) Act, 1991 - which sets out the PIT and APT; and
- The Petroleum Laws Amendment Act, 1998 - which introduces a number of specific new incentives for Third Round licensees.
- Administrative provisions contained in the Income Tax Act 24 of 1981 (the "Income Tax Act")

INCOME TAX (PIT)

- PIT is levied at the rate of 35% of taxable income.
- Levied separately (PIT) for each licence area
- In the computation of taxable income, exploration expenditure and operating expenditure is written off immediately and in full (i.e. 100% depreciation). Development expenditure is depreciated over 3 years (33.33% per annum, straight line), and deducted accordingly.
- PIT is assessed on a License Area (i.e. contract area) basis. However, exploration expenditure incurred by a licensee, after the enactment of the Petroleum Laws Amendment Act, 1998, in any License Area in Namibia may be deducted in the computation of that licensee's PIT taxable income from a producing License Area
- The Territorial Sea and Exclusive Economic Zone of Namibia Act of 1990. "Namibia is, for income tax purposes now, extended from 12 nautical miles to 200 nautical miles from the low watermark".

ADDITIONAL PROFIT TAX (APT)

- An incremental three tiered APT is charged on the after-tax net cash flow from petroleum operations in each License Area separately. Exploration,

development and operating expenditures, as well as Royalty and PIT, are all fully deductible in the year they are paid in the computation of the APT net cash flow for the year.

- APT will only be paid if the petroleum operations in a License Area earn an after-tax real (i.e. inflation-adjusted) rate of return of 15%. The second and third tiers of APT become payable once the profitability level exceeds 20% and 25% respectively.
- The first tier rate of APT is established in the legislation (through a formula) at 25%. However, the incremental second and third tier APT rates are biddable by, and negotiable with each prospective investor contained in the respective Petroleum Agreement.

ROYALTIES

- 5% of gross revenue
- Value of crude oil or gas for royalty and tax purposes based on market value at agreed of-take point.
- Under the PTA, the royalty paid is deductible in the determination of the taxable income of the license holder. In Special circumstances, the Minister may defer, remit or refund Royalty due, upon application made by the holder of a production license.

WITHHOLDING TAX (WHT)

- **Dividends**

Petroleum companies are exempt from the withholding tax (WHT) on dividends, or the NRST on any dividend distributed out of taxable income from mining for natural oil or gas in Namibia.

- **Services**

As from 30 December 2011, payments for management, consultancy or technical services (as defined) to nonresidents (as defined) have been subject to WHT at a rate of 25% on the gross amount of the service fees. The WHT deducted must be paid by the Namibian company or branch, which pays the tax on behalf of the non-resident, unless the provisions of a double taxation agreement (DTA) provide relief.

- **Royalties**

Royalty WHT applies to payments to nonresidents for the use or right to use defined intellectual property in Namibia. The rate of WHT on royalties is currently 9.9% and may be reduced by the provisions of a DTA. Proposals made by the Ministry of Finance have reduced the tax rate by 0.3% to 9.9% for 2013 and by a further 0.3% to 9.6% for 2014.

- **Interest**

No WHT is payable on interest.

LICENCE FEE

Initial and annual rental charge provided for in Section 67 of the Petroleum Act 1991.

As is standard international practice, license application fees, annual license area rental charges and annual training sums are payable in addition to the main fiscal impositions. The application fees are modest, and range from N\$3,000 to N\$30,000 depending on the process being applied for (Schedule 1 of Petroleum Act 1991)

Annual License area rental charges (which are deductible in the computation of PIT and APT, and are not indexed to inflation) are as follows;

EXPLORATION (ranging from N\$60-N\$150 per sq. km as per period) and
PRODUCTION N\$1,500 per sq. km. of production area held.

CAPITAL ALLOWANCES

- **Exploration**

Write-off of accumulated exploration costs in the year of first production (unless transferred to another field under circumstances prescribed in the PTA) and one-third of development expenditure. The rest of the development expenditure is written off in equal installments in the two subsequent years. (i.e. not ring fenced to a single licence area)

- **Development**

Accumulated development expenditures are deductible in three equal installments commencing in the first year of production.

- **Losses**

Losses from allowable deductions may be offset against gross income from the licence area only and can be carried forward without limitation

Losses cannot be offset against income from another licence area.

DECOMMISSIONING

As a result of the Petroleum Laws Amendment Act, 1998, licensees will be required (as from the date when half (50%) of the estimated petroleum reserves have been produced) to make annual contributions into a decommissioning trust fund. These

annual contributions will be deductible in the computation of taxable income for both PIT and APT.

TRAINING

Licensees must commit to spend a (biddable and negotiable) minimum annual amount specifically on the training of Namibians in petroleum and petroleum-related matters.