

PETROLEUM PROFITS TAX ACT, CAP. 354 LFN, 1990

• Laws • Subsidiary Legislation •

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PETROLEUM PROFITS TAX ACT

An Act to impose a tax upon profits from the winning of Petroleum in Nigeria, to provide for the assessment and collection thereof and for purposes connected therewith.

[1959 No. 15. 1991 No. 21. 1996 No. 30. 1996 No. 31. 1996 No. 32. 1998 No. 18. 1999 No. 30.]

[1st January, 1958]

[Commencement.]

PART I

Preliminary

1. Short title

This Act may be cited as the Petroleum Profits Tax Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“accounting period” in relation to a company engaged in petroleum operations, means—

(a) a period of one year commencing on 1 January and ending on 31 December of the same year; or

(b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil under a programme of continuous production and sales, domestic, export or both, and ending on 31 December of the same year; or

(c) any period of less than a year being a period commencing on 1 January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations,

and in the event of any dispute with respect to the date of the first sale of chargeable oil above or with respect to the date on which the company ceases to be engaged in petroleum operations, the Minister of Petroleum Resources shall determine the same and no appeal shall lie therefrom;

“adjusted profit” means adjusted profit for the purpose of section 9 of this Act;

“assessable profits” means assessable profits for the purpose of section 9 of this Act;

“assessable tax” means assessable tax ascertained under section 21 of this Act;

“Board” means the Federal Board of Inland Revenue established and constituted in accordance with section 1 of the Companies Income Tax Act;

[Cap. C21.]

“casinghead petroleum spirit” means any liquid hydrocarbons obtained in Nigeria from natural gas by separation or by any chemical or physical process but before the same has been refined or otherwise treated;

“chargeable natural gas” in relation to a company engaged in petroleum operations means natural gas actually delivered by such company to the Nigerian National Petroleum Corporation under a Gas Sales Contract but does not include natural gas taken by or on behalf of the Government of the Federation in pursuance of this Act;

“chargeable profits” means chargeable profits for the purpose of section 9 of this Act;

“chargeable tax” means chargeable tax ascertained under section 22 of this Act and imposed under this Act;

“company” means any body corporate incorporated under any law in force in Nigeria or elsewhere;

“crude oil” means any oil (other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits) won in Nigeria either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil has been refined or otherwise treated;

“disposal” and “disposed of”, in relation to chargeable oil owned by a company engaged in petroleum operations, mean or connote respectively—

(a) delivery, without sale, of chargeable oil to; and

(b) chargeable oil delivered, without sale, to a refinery or to an adjacent storage tank for refining by the company;

“G-Factor” means gas production cost adjustment factor;

“High Court” means a High Court in Nigeria within whose jurisdiction—

(a) in relation to any offence under this Act, the place is situated where such offence is, for the purposes of this Act, deemed to have occurred;

(b) in relation to any suit for tax or appeal against an assessment of tax, the place is situated where the return under section 33 of this Act was submitted or where the assessment of the tax was made as the case may be;

(c) in relation to any direction under section 32 (2) of this Act, the place is situated from which the direction was issued; and

(d) in relation to any claim or other matter which is subject to appeal in like manner as an assessment, or to which the provisions of section 38 of this Act apply with any modifications, the place is situated from which the claim or other matter was refused by the Board;

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

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

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

(c) cleaning, draining and levelling land, road-building and the laying of foundations;

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

“liquified natural gas” means natural gas in its liquid state at approximately atmospheric pressure;

“loss” means a loss ascertained in like manner as an adjusted profit;

“Minister” means the Minister charged with responsibility for matters relating to taxes on incomes and profits;

“MMcf” means one million cubic feet;

“natural gas” means gas obtained in Nigeria from boreholes and wells and consisting primarily of hydrocarbons;

“Nigeria” includes the submarine areas beneath the territorial waters of Nigeria and submarine areas beneath any other waters which are or at any time shall in respect of mines and minerals become subject to the legislative competence of the National Assembly;

“non-productive rents” means and includes the amount of any rent as to which there is provision for its deduction from the amount of any royalty under a petroleum prospecting licence or oil mining lease to the extent that such rent is not so deducted;

“oil mining lease” means a lease granted to a company, under the Minerals and Mining Act, for the purpose of winning petroleum or any assignment of such lease;

[Cap. M12.]

“oil prospecting licence” means a licence granted to a company, under the Minerals and Mining Act, for the purpose of winning petroleum, or any assignment of such licence;

“person” includes a company and any unincorporated body of persons;

“petroleum” means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in Nigeria but does not include liquified natural gas, coal, bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

“petroleum operations” means the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company;

“profits” means profits for the purpose of section 9 of this Act;

“resident in Nigeria” in relation to a company, means a company the control and management of the business of which are exercised in Nigeria;

“royalties” means and includes—

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

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

“tax” means chargeable tax.

PART II

Administration

3. Powers and duties of the Board

(1) Subject to the provisions of this Act—

(a) the due administration of this Act and the tax shall be under the care and management of the Board which may do all such acts as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Minister;

(b) whenever the Board shall consider it necessary with respect to any tax due, the Board may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or any judgment debt due in respect of any tax and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed as aforesaid;

(c) the Board may sue and be sued in its official name and, subject to any express provisions under any subsidiary legislation or otherwise, the Board may authorise any person to accept service of any document to be sent, served upon or delivered to the Board and to represent the Board in any proceedings;

(d) subject to such conditions as the Board may specify the Board may by notice in the Federal Gazette direct that any information, return or documents required to be supplied to such other person whether within or outside Nigeria as the Board may direct;

(e) the Board may by notice in the Federal Gazette or in writing authorise any person within or without Nigeria to—

(i) perform or exercise, on behalf of the Board, any power or duty conferred upon the Board other than the powers or duties specified in the First Schedule; and

[First Schedule.]

(ii) receive any notice or other document to be given, delivered or served upon the Board under or in consequence of this Act or any subsidiary legislation made thereunder;

(f) in the exercise of the powers and duties conferred upon the Board, the Board shall be subject to the authority, direction, and control of the Minister and any written direction, order or instruction given by him after consultation with the chairman of the Board shall be carried out by the Board:

Provided that the Minister shall not give any direction, order or instruction in respect of any particular company which would have the effect of requiring the Board to raise an additional assessment upon such company or to increase or decrease any assessment made or to be made or any penalty imposed or to be imposed upon or any relief given or to be given to or to defer the collection of any tax, penalty or judgment debt due by such company, or which would have the effect of altering the normal course of any proceedings, whether civil or criminal, relating either to the recovery of any tax or penalty or any offence relating to tax;

(g) every claim, objection, appeal, representation or the like made by any person under any provision of this Act or of any subsidiary legislation made thereunder shall be made in accordance with such Act and legislation; and

(h) in any claim or matter or upon any objection or appeal under this Act, any act, matter or thing done by or with the authority of the Board, in pursuance of any provisions of this Act shall not be subject to challenge on the ground that such act, matter or thing was not or was not proved to be in accordance with any direction, order or instruction given by the Minister.

4. Signification and execution of powers, duties, etc.

(1) Anything required to be done by the Board, in relation to the powers or duties specified in the First Schedule of this Act, may be signified under the hand of the chairman of the Board, or of an officer of the Federal Inland Revenue Department who has been authorised by the Board to signify from time to time, anything done or to be done by the Board in respect of such powers or duties.

[First Schedule.]

(2) Any authorisation given by the Board under or by virtue of this Act shall be signified under the hand of the chairman of the Board unless such authority is notified in the Federal Gazette.

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

(a) it is signed by the chairman of the Board or by any person authorised by him; or

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

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

5. Official secrecy, etc.

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

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to tax or petroleum operations or the amount and value of chargeable oil won by any company, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person—

(a) other than a person to whom he is authorised by the Minister to communicate it; or

(b) otherwise than for the purpose of this Act or of any Act or law, relating to a tax upon income, in force in any part of Nigeria,

shall be guilty of an offence.

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

(4) Where under any law in force in any territory outside Nigeria provision is made for the allowance of relief from income tax and similar taxes in respect of the payment of income tax and similar taxes in Nigeria or for the exemption of income from income tax and similar taxes in respect of income subject

to income tax and similar taxes in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in that territory of such facts as may be necessary to enable the proper relief or exemption to be given in cases where relief or exemption is claimed from income tax and similar taxes in Nigeria or from income tax and similar taxes in that territory. For the purposes of this subsection, tax (as defined in this Act) shall be regarded as a tax similar to an income tax.

(5) Notwithstanding anything contained in this section, the Board may permit the Auditor-General for the Federation or any officer duly authorised in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties; and the Auditor-General for the Federation or any such officer shall be deemed to be a person employed in carrying out the provisions of this Act for the purpose of this section.

6. Rules and forms

(1) The Minister may, from time to time, make rules generally for the carrying out of the provisions of this Act.

(2) The Board may, from time to time, specify the form of returns, claims, statements and notices under this Act.

7. Service and signature of notices

(1) Except where it is provided by this Act that service shall be effected either personally or by registered post the provisions of section 26 of the Interpretation Act shall apply to the service of a notice, if such notice is addressed in accordance with the provisions of subsection (3) of this section.

[Cap. I23.]

(2) Where a notice is sent by registered post it shall be deemed to have been served on the day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that such notice is addressed in accordance with the provisions of subsection (3) of this section:

Provided that a notice shall not be deemed to have been served under this subsection if the addressee proves that no notification, informing him of the fact that the registered letter was awaiting him at a post office, was left at the address given on such registered letter.

(3) A notice to be served in accordance with subsection (1) or (2) of this section shall be addressed—

(a) in the case of a company incorporated in Nigeria, to the registered office of the company; and

(b) in the case of a company incorporated outside Nigeria, either to the individual authorised to accept service of process under the Companies and Allied Matters Act at the address filed with the Registrar-General, or to the registered office of the company wherever it may be situated.

[Cap. C20.]

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

PART III

Imposition of tax and ascertainment of chargeable profits

8. Charge of tax

There shall be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period, a tax to be charged, assessed and payable in accordance with the provisions of this Act.

9. Ascertainment of profits, adjusted profit, assessable profits and chargeable profits

(1) Subject to any express provisions of this Act, in relation to any accounting period, the profits of that period of a company shall be taken to be the aggregate of—

- (a) the proceeds of sale of all chargeable oil sold by the company in that period;
- (b) the value of all chargeable oil disposed of by the company in that period; and
- (c) all income of the company of that period incidental to and arising from any one or more of its petroleum operations.

(2) For the purposes of subsection (1) (b) of this section, the value of any chargeable oil so disposed of shall be taken to be the aggregate of—

- (a) the value of that oil as determined, for the purpose of royalty, in accordance with the provisions of any enactment applicable thereto and any financial agreement or arrangement between the Federal Government of Nigeria and the company;
- (b) any cost of extraction of that oil deducted in determining its value as referred to in paragraph (a) of this subsection; and
- (c) any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal.

(3) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 10 of this Act and any adjustments to be made in accordance with the provisions of section 14 of this Act.

(4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 20 of this Act.

(5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 20 of this Act.

10. Deductions

(1) In computing the adjusted profit of any company of any accounting period from its petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred, whether within or without Nigeria, during that period by such company for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing

—

(a) rents incurred by the company for that period in respect of land or buildings occupied under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance; [1996 No. 31.]

(b) all non-productive rents, the liability for which was incurred by the company during that period; [1999 No. 30.]

(c) all royalties, the liability for which was incurred by the company during that period in respect of natural gas sold and actually delivered to the Nigerian National Petroleum Corporation, or sold to any other buyer or customer or disposed of in any other commercial manner; [1996 No. 31.]

(d) all royalties the liability for which was incurred by the company during that period in respect of crude oil or of casinghead petroleum spirit won in Nigeria;

(e) all sums the liability for which was incurred by the company to the Federal Government of Nigeria during that period by way of customs or excise duty or other like charges levied in respect of machineries, equipment and goods used in the company's petroleum operation; and [1999 No. 30.]

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

(g) all sums incurred by way of interest on any inter-company loans obtained under terms prevailing in the open market, that is the London Inter-Bank Offer Rate, by companies that engage in crude oil production operations in the Nigerian oil industry; [1999 No. 30.]

(h) any expense incurred for repair of premises, plant, machinery, or fixtures employed for the purpose of carrying on petroleum operations or for the renewal, repair or alteration of any implement, utensils or articles so employed;

(i) debts directly incurred to the company and proved to the satisfaction of the Board to have become bad or doubtful in the accounting period for which the adjusted profits is being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period:

Provided that—

(i) the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period, nor in respect of any particular debt shall it include any amount deducted under the provisions of this paragraph in determining the adjusted profit of a previous accounting period;

(ii) all sums recovered by the company during that accounting period on account of amounts previously deducted in respect of bad or doubtful debts shall, for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of that company of that period; and

(iii) it is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed were either—

(a) included as a profit from the carrying on of petroleum operations in the accounting period in which they were incurred; or

(b) advances made in the normal course of carrying on petroleum operations not being advances on account of any item falling within the provisions of section 13 of this Act;

(j) any other expenditure, including tangible drilling costs directly incurred in connection with drilling and appraisal of a development well, but excluding an expenditure which is qualifying expenditure for the purpose of the Second 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— [1996 No. 31.]

(i) 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;

(ii) 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 Second Schedule;

[Second Schedule.]

(k) any contributions to a pension, provident or other society, scheme or fund which may be approved, with or without retrospective effect, by the Board subject to such general conditions or particular conditions in the case of any such society, scheme or fund as the Board may prescribe:

Provided that any sum received by or the value of any benefit obtained by such company, from any approved pension, provident or other society, scheme or fund, in any accounting period of that company shall, for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of that company of that accounting period;

(l) all sums, the liability of which was incurred by the company during that period to the Federal Government, or to any State or Local Government Council in Nigeria by way of duty, customs and excise duties, stamp duties, education tax, tax (other than the tax imposed by this Act) or any other rate, fee or other like charges;

[1996 No. 31.]

(m) such other deductions as may be prescribed by any rule 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 subsection (1) (c) of section 9 of this Act, be treated as income of the company of its accounting period in which such waiver or release was made or given.

11. Incentives for utilisation of associated gas

(1) The following incentives shall apply to a company engaged in the utilization of associated gas, that is

— [1998 No. 19.]

(a) investment required to separate crude oil and gas from the reservoir into usable products shall be considered as part of the oil field development;

(b) capital investment on facilities equipment to deliver associated gas in usable form at utilization or designated custody transfer points shall be treated for tax purposes, as part of the capital investment for oil development;

(c) capital allowances, operating expenses and basis of tax assessment shall be subject to the provisions of this Act and the tax incentives under the revised memorandum of understanding.

(2) The incentives specified under subsection (1) of this section shall be subject to the following conditions, that is—

(a) condensates extracted and re-injected into the crude oil stream shall be treated as oil but those not re-injected shall be treated under existing tax arrangement;

(b) the company shall pay the minimum amount charged by the Minister of Petroleum Resources for any gas flared by the company;

(c) the company shall, where practicable, keep the expenses incurred in the utilization of associated gas separate from those incurred on crude oil operation and only expenses not able to be separated shall be allowable against the crude oil income of the company under this Act;

(d) expenses identified as incurred exclusively in the utilization of associated gas shall be regarded as gas expenses and be allowable against the gas income and profit to be taxed under the Companies Income Tax Act;

[Cap. C21.]

(e) only companies which invest in natural gas liquid extraction facilities to supply gas in usable form to downstream projects, including aluminum smelter and methanol, Methyl Tertiary Butyl Ether and other associated gas utilization projects shall benefit from the incentives;

(f) all capital investments relating to the gas-to-liquids facilities shall be treated as chargeable capital allowance and recovered against the crude oil income; [1999 No. 30.]

(g) gas transferred from the natural gas liquid facility to the gas-to-liquid facilities shall be at zero per cent tax and zero per cent royalty. [1999 No. 30.]

12. Application of incentives to utilisation of non-associated gas

All incentives granted in respect of investments in associated gas shall be applicable to investments in non-associated gas. [1999 No. 30.]

13. Deductions not allowed

(1) Subject to the express provisions of this Act, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its petroleum operations, no deduction shall be allowed in respect of—

(a) any disbursements or expenses not been money wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred, for the purpose of those operations;

(b) any capital withdrawn or any sum employed or intended to be employed as capital;

- (c) any capital employed in improvements as distinct from repairs;
- (d) any sum recoverable under an insurance or contract of indemnity;
- (e) rent of or cost of repairs to any premises or part of premises not incurred for the purposes of those operations;
- (f) any amounts incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere;
- (g) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;
- (h) any payment to any provident, savings widows' and orphans' or other society, scheme or fund, except such payments as are allowed under subsection (1) (g) of section 10 of this Act;
- (i) any customs duty on goods (including articles or any other thing) imported by the company— [1996 No. 31.]
 - (i) for resale or for personal consumption of employees of the company; or
 - (ii) where goods of the same quality to those so imported are produced in Nigeria and are available, at the time the imported goods were ordered by the company for sale to the public at the prices less or equivalent to the cost to the company of the imported goods;
- (j) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits.

(2) Notwithstanding the provisions of subsection (1) (d) of section 10 of this Act, in computing the adjusted profit of any company of any accounting period no deduction shall be allowed in respect of sums incurred by way of interest during that period upon any borrowed money where such money was borrowed from a second company if during that period—

- (a) either company has an interest in the other company; or
- (b) both have interests in another company either directly or through other companies; or
- (c) both are subsidiaries of another company.

(3) For the purposes of subsection (2) of this section—

- (a) a company shall be deemed to be a subsidiary of another company if and so long as an interest in it is held by that other company either directly or through any other company or companies;
- (b) an interest means a beneficial interest in issued share capital (by whatever name called); and
- (c) the Board shall disregard any such last-mentioned interest which in their opinion is insignificant or remote, or where in their opinion that interest arises from a normal market investment and the companies concerned have no other dealings or connection between each other.

14. Exclusion of certain profits, etc.

Where a company engaged in petroleum operations is engaged in the transportation of chargeable oil by ocean going oil-tankers operated by or on behalf of the company from Nigeria to another territory then such adjustments shall be made in computing an adjusted profit or a loss as shall have the effect of excluding therefrom any profit or loss attributable to such transportation.

15. Artificial transactions, etc.

(1) Where the Board is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Board may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as the Board considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessable accordingly. In this subsection, the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious, namely, transactions between persons one of whom has control over the other or between persons both of whom are controlled by some other person which, in the opinion of the Board, have not been made on the terms which might fairly have been expected to have been made by independent person engaged in the same or similar activities dealing with one another at arm's length.

(3) Nothing in this section shall prevent the decision of the Board in the exercise of any discretion given to the Board by this section from being questioned in an appeal against an assessment in accordance with Part VIII of this Act and on the hearing of any such appeal the appropriate Appeal Commissioners or the Court may confirm or vary any such decision including any directions made under this section.

16. Assessable profits and losses

(1) Subject to the provisions of this section, the assessable profits of any company for any accounting period shall be the amount of the adjusted profit of that period after the deduction of—

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

(b) in a case to which section 18 of this Act applies, the amount of any loss which under that section is deemed to be a loss incurred by that company in its trade or business during its first accounting period.

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

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

17. Trade or business sold or transferred to a Nigerian company

(1) Without prejudice to section 28 of this Act, where a trade or business of petroleum operations carried on in Nigeria by a company incorporated under any law in force in Nigeria is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in that trade or business is so sold or transferred, then, if the Board is satisfied that one of those companies has control over the other or that both companies are controlled by some other person or are members of a recognised group of companies, the provisions set out in subsection (2) of this section shall have effect.

(2) In a case to which subsection (1) of this section applies, the Board may in its discretion—

(a) if, on or before the date on which the trade or business is so sold or transferred, the first sale of or bulk disposal of chargeable oil by or on behalf of the company selling or transferring the trade or business has occurred, but the first sale of or bulk disposal of chargeable oil by or on behalf of the Nigerian company acquiring that trade or business has not occurred—

(i) direct that the first accounting period of the Nigerian company shall be the period of twelve months commencing on the date on which the sale or transfer of the trade or business takes place, or commencing on such date within the calendar month in which the sale or transfer takes place as may be selected by the Nigerian company with the approval of the Board; and

(ii) for the purposes of subsection (2) (a) (i) of this section, an accounting period as respects the Nigerian company shall be a period of twelve months commencing on the date on which the sale or transfer of the trade or business to the Nigerian company takes place, or commencing on such date within the calendar month in which the sale or transfer takes place as may be selected by the Nigerian company with the approval of the Board, and the definition of “accounting period” in section 2 of this Act shall be construed accordingly, but without prejudice to the continued application in respect of the Nigerian company of the provisions of paragraphs (b), (c) and (d) of that definition;

[Second Schedule.]

(b) direct that for the purposes of the Second Schedule the asset sold or transferred to the Nigerian company by the company selling or transferring the trade or business shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure on the asset on the day following the day on which the sale or transfer thereof occurred; and

(c) direct that the Nigerian company acquiring the asset so sold or transferred shall not be entitled to any initial allowance in respect of that asset, and shall be deemed to have received all allowances given to the company selling or transferring the trade or business in respect of the asset under the Second Schedule and any allowances deemed to have been received by that company under the provisions of this paragraph:

Provided that the Board in its discretion—

(i) may require the company selling or transferring the trade or business, or the Nigerian company acquiring that trade or business, to guarantee or give security, to the satisfaction of the Board, for payment in full of all tax due or to become due from the company selling or transferring the trade or business; and

(ii) may impose such conditions as it sees fit on either of the companies aforesaid or on both of them,

and in the event of failure by that company or, as the case may be, those companies to carry out or fulfil the guarantee or conditions, the Board may revoke the direction and may make all such additional assessments or repayment of tax as may be necessary to give effect to the revocation.

(3) In this section—

“Nigerian company” means any company the control and management of whose activities are exercised in Nigeria; and

“references to a trade or business” shall include references to any part thereof.

18. Trade or business transferred under the Companies and Allied Matters Act

(1) Where in pursuance of the provisions of Part X of the Companies and Allied Matters Act, a company (in this subsection referred to as “the Reconstituted Company”) is incorporated under that Act to carry on any trade or business of petroleum operations previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the reconstituted company, then, if the Board is satisfied that the trade or business carried on by the Reconstituted Company immediately after the incorporation of that company under that Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the provisions set out in subsection (2) of this section shall have effect, notwithstanding anything in this Act to the contrary.

[Cap. C20.]

(2) The following provisions shall have effect in a case to which subsection (1) of this section applies, namely—

(a) if as respects the trade or business previously carried on in Nigeria by the foreign company the first sale of or bulk disposal of chargeable oil by or on behalf of the foreign company has occurred on or before the date on which the Reconstituted Company is incorporated—

(i) the first accounting period of the Reconstituted Company shall be the period of twelve months commencing on the date on which that company is incorporated, or commencing on such date within the calendar month in which the company is incorporated as may be selected by the company with the approval of the Board; and

(ii) for the purposes of subsection (2) (a) (i) of this section, an accounting period as respects the Reconstituted Company shall be a period of twelve months commencing on the date on which that company is incorporated, or commencing on such date within the calendar month in which the Reconstituted Company is incorporated as may be selected by the company with the approval of the Board, and the definition of “accounting period” in section 2 of this Act shall be construed accordingly, but without prejudice to the continued application in respect of the Reconstituted Company of the provisions of paragraphs (b), (c) and (d) of that definition;

(b) for the purposes of the Second Schedule to this Act, the assets so vested in the Reconstituted Company shall be deemed to have been sold to it, on the day of its incorporation, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign company ceased;

[Second Schedule.]

(c) the Reconstituted Company shall not be entitled to any initial allowances as respects those assets, and shall be deemed to have received all allowances given to the foreign company in respect of those assets under the Second Schedule and any allowances deemed to have been received by the foreign company under the provisions of this paragraph or section 17 of this Act; and

(d) the amount of any loss incurred during any accounting period by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits of any accounting period of that foreign company, shall be deemed to be a loss incurred by the Reconstituted Company in its trade or business during its first accounting period; and the amount of that loss shall in accordance with the provisions of section 16 of this Act, be deducted from the adjusted profits of the Reconstituted Company:

Provided that—

(i) no deduction shall be made under this paragraph in respect of the loss aforesaid except to extent, if any, to which it is proved by the Reconstituted Company to the satisfaction of the Chief Petroleum Engineer in the civil service of the Federation that the loss was not the result of any damage or destruction caused by any military or other operation connected with the civil war in which Nigeria was engaged;

(ii) notwithstanding the foregoing proviso, the President may by order, direct that, to the extent specified in the direction, a deduction under this paragraph shall be made in respect of a loss which is the result of any damage or destruction caused by any military or other operations mentioned in that proviso:

Provided however, that no deduction in respect of any loss to which this paragraph applies shall be made unless within two years after the incorporation of the Reconstituted Company a claim for that deduction is lodged by that company with the Chief Petroleum Engineer aforesaid and a copy of the claim is forwarded by that company to the Board.

(3) In this section “foreign company” means a company incorporated outside Nigeria before 18 November 1968, and having on that date an established place of business in Nigeria.

19. Board may call for returns and information relating to certain assets, etc.

For the purposes of sections 17 and 18 of this Act, the Board may by notice require any person (including a company to which any assets are sold or transferred, or in which any assets have vested in pursuance of Part X of the Companies and Allied Matters Act), to complete and deliver to the Board any returns specified in the notice or any such information as the Board may require about the assets; and it shall be the duty of that person to comply with requirements of any such notice within the period specified in the notice, not being a period of less than 21 days from the service thereof. [Cap. C20.]

20. Chargeable profits and capital allowances

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

(2) There shall be computed the aggregate amount of all allowances due to the company under the provisions of the Second Schedule for the accounting period.

[Second Schedule.]

(3) In calculating the amount of the deduction to be allowed under this section for the accounting period, the limitation imposed by subsection (4) of this section shall be applied to ensure that the amount of any tax chargeable on the company for that period shall be not less than fifteen per cent of the tax which would be chargeable on the company for that period if no deduction were to be made under this section for that period.

(4) The amount to be allowed as a deduction under subsection (1) in respect of the said allowances shall be—

(a) the aggregate amount computed under subsection (2) of this section; or

(b) a sum equal to 85% of the assessable profits of the accounting period less 170% of the total amount of the deduction allowed as petroleum investment allowance computed under the Second Schedule to this Act for that period, whichever is the less.

[Second Schedule.]

(5) Where the total amount of the allowances computed under subsection (2) of this section cannot be deducted under subsection (1) of this section owing to there being an insufficiency of or no assessable profits of the accounting period or to the limitation imposed by subsection (4) of this section, such total amount or the part thereof which has not been so deducted as the case may be, shall be added to the aggregate amount to be computed under subsection (2) of this section for the following accounting period of the company, and thereafter shall be deemed to be an allowance due to the company, under the provisions of the Second Schedule to this Act for that following accounting period.

PART IV

Ascertainment of assessable tax and of chargeable tax

21. Assessable tax

(1) The assessable tax for any accounting period of a company shall be an amount equal to 85% of its chargeable profits of that period.

(2) Where a company has not qualified for treatment under paragraph 6 (4) of the Second Schedule to this Act, that is to say, where a company has not yet commenced to make a sale or bulk disposal of chargeable oil under a programme of continuous production and sales as at 1 April 1977, its assessable tax for any accounting period during which it has not fully amortised all pre-production capitalised expenditure due to it less the amount to be retained in the book as provided for in paragraph 6 of the Second Schedule to this Act shall be 65.75% of the chargeable profits for that period.

[Second Schedule.]

22. Chargeable tax

(1) A crude oil producing company which executed a Production Sharing Contract with the Nigerian National Petroleum Corporation in 1993 shall, throughout the duration of the Production Sharing Contract, be entitled to claim an investment tax credit allowance as an offset against tax in accordance with the provision of the Production Sharing Contract. [1999 No. 30.]

(2) The investment tax credit rate applicable to the contract area shall be 50% flat rate of chargeable profit for the duration of the Production Sharing Contract. [1999 No. 30.]

(3) In computing the tax payable, the investment tax credit shall be applicable in full to petroleum operations in the contract area such that the chargeable tax is the amount of the assessable tax less the investment tax credit. [1999 No. 30.]

(4) The chargeable tax computed under subsection (3) of this section shall be split between the Nigerian National Petroleum Corporation and the crude oil producing company in accordance with the proportion of the percentage of profit of oil split. [1999 No. 30.]

(5) In this section—

“contract area” means the contract area as defined in the Production Sharing Contract;

“Production Sharing Contract” has the meaning assigned to it in the Deep Offshore and Inland Basin Production Sharing Contracts Act. [1999 No. 30. Cap. D3.]

23. Additional chargeable tax payable in certain circumstances

(1) If, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Act other than this section, is less than the amount mentioned in subsection (2) of this section, the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts.

(2) The amount referred to in the foregoing subsection is, for any accounting period of a company, the amount which the chargeable tax for that period, calculated in accordance with the provisions of this Act, would come to if, in the case of crude oil exported from Nigeria by the company, the reference in section 9 (1) (a) of this Act to the proceeds of sale thereof were a reference to the amount obtained by multiplying the number of barrels of that crude oil by the relevant sum per barrel.

(3) For the purposes of subsection (2) of this section the relevant sum per barrel of crude oil exported by a company is the posted price applicable to that crude oil reduced by such allowances (if any) as may from time to time be agreed in writing between the Government of Nigeria and the company.

(4) The whole of any additional chargeable tax payable by a company by virtue of this section for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period apart from this section, and shall be assessed and be paid by the company accordingly under the provisions of this Act.

(5) In this section, “posted price”, in relation to any crude oil exported from Nigeria by a company, means the price F.O.B. at the Nigerian port of export for crude oil of the gravity and quality in question which is from time to time established by the company, after agreement with the Government of Nigeria as to the procedure to be followed for the purpose, as its posted price for Nigerian crude oil of that gravity and quality.

(6) Every posted price established as aforesaid must bear a fair and reasonable relationship—

(a) to the established posted prices of Nigerian crude oils of comparable quality and gravity, if any; or

(b) if there are no such established posted prices for such Nigerian crude oils to the posted prices at main international trading export centers for crude oil of comparable quality and gravity, due regard being had in either case to freight differentials and all other relevant factors.

(7) References in this section to crude oil include references to casinghead petroleum spirit which has been injected into crude oil.

(8) Where any crude oil which in relation to a particular company is chargeable oil is exported from Nigeria otherwise than by that company, that crude oil shall for the purposes of this section be deemed to be exported from Nigeria by that company.

PART V

Persons chargeable

24. Partnerships, etc.

(1) Any person (other than a company) who engages in petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from those operations shall be guilty of an offence.

(2) Where two or more companies are engaged in petroleum operations either in partnership, in a joint adventure or in concert under any scheme or arrangement, the Minister may make rules for the ascertainment of the tax to be charged and assessed upon each company so engaged.

(3) Any such rules may modify the provisions of this Act in such manner as the Minister may think fit and may if necessary, provide for the apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company, or may provide for the computation of any tax as if the partnership, joint adventure, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned or may accept some other basis of ascertaining the tax chargeable upon each of the companies which may be put forward by those companies and such rules may contain provisions which have regard to any circumstances whereby such operations are partly carried on for any companies by an operating company whose expenses are reimbursed by those companies.

(4) Any such rules may be expressed to be of general application for the purposes of this section and Act or of particular application to a specified partnership, joint adventure, scheme or arrangement.

(5) Any such rules may be amended or replaced from time to time with or without retrospective effect.

(6) The effect of any such rules shall not impose a greater burden of tax upon any company so engaged in any partnership, joint adventure, scheme or arrangement than would have been imposed upon that company under this Act if all things enjoyed, done or suffered by such partnership, joint adventure, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint adventure, scheme or arrangement.

25. Companies not resident in Nigeria

(1) A company not resident in Nigeria which is or has been engaged in petroleum operations (hereinafter in this section referred to as a "non-resident company") shall be assessable and chargeable

to tax, either directly or in the name of its manager, or in the name of any other person who is resident in Nigeria, employed in the management of the petroleum operations carried on by such non-resident company, as such non-resident company would be assessed and charged if it were resident in Nigeria.

(2) The person in whose name a non-resident company is assessable and chargeable to tax shall be answerable—

(a) for all matters required to be done by virtue of this Act for the assessment of the tax as might be required to be done by such non-resident company if it were resident in Nigeria; and

(b) for paying any tax assessed and charged in the name of such person by virtue of subsection (1) of this section.

26. Manager of companies, etc., to be answerable

The manager or any principal officer in Nigeria of every company which is or has been engaged in petroleum operations shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.

27. Company wound up, etc.

(1) Where a company is being wound up or where in respect of a company a receiver has been appointed by any Court, by the holders of any debentures issued by the company or otherwise, the company may be assessed and charged to tax in the name of the liquidator of the company, the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver.

(2) Any such liquidator, receiver or agent shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.

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

28. Avoidance by transfer

Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Board one reason for such transfer by the company was to avoid payment of such tax then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 48 of this Act subject to any necessary modification of that section.

29. Indemnification of representative

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

PART VI

Accounts and particulars

30. Preparation and delivery of accounts and particulars

(1) Every company which is or has been engaged in petroleum operations shall for each accounting period of the company, make up accounts of its profits or losses, arising from those operations, of that period and shall prepare the following particulars—

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

(b) in connection with the Second Schedule to this Act, a schedule showing—

[Second Schedule.]

(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 (estimated by references to the provisions of that Schedule) disposed of in that period; and

(iv) the allowances due to it under that Schedule for that period;

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

(d) a statement of other sums, deductible under section 22 of this Act, the liabilities for which were incurred during that period;

(e) a statement of all amounts repaid, refunded, waived or released to it, as referred to in subsection (5) of section 20 of this Act, during that period; and

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

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

31. Board may call for further information

The Board may give notice in writing to any company which is or has been engaged in petroleum operations when and as often as to the Board may seem necessary requiring it to furnish within such reasonable time as may be specified by such notice fuller or further information as to any of the matters

either referred to in section 30 of this Act or as to any other matters which the Board may consider necessary for the purposes of this Act.

32. Power to call for returns, books, etc.

(1) For the purpose of obtaining full information in respect of any company's petroleum operations the Board may give notice to such company requiring it within the time limited by such notice, which time shall not be less than 21 days from the date of service of such notice, to complete and deliver to the Board any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Board or its authorised representative on such date or dates as may be specified in such notice and to produce for examination any books, documents, accounts and particulars which the Board may deem necessary.

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

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

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

33. Returns of estimated tax

(1) Not later than two months after the commencement of each accounting period of any company engaged in petroleum operations, the company shall submit to the Board a return, the form of which the Board may prescribe, of its estimated tax for such accounting period.

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

34. Extension of periods for making returns

Where it is shown by any company to the satisfaction of the Board that for some good reason the company is not able to comply with the provisions of section 30 of this Act within the time limited by that section or any notice given to it under section 31 or 32 of this Act, within the time limited by any such notice, the Board may grant in writing such extension of that time as the Board may consider necessary.

PART VII

Assessments

35. Board to make assessments

(1) The Board shall proceed to assess every company with the tax for any accounting period of the company as soon as may be after the expiration of the time allowed to such company for the delivery of the accounts and particulars provided for in section 30 of this Act.

(2) Where a company has delivered accounts and particulars for any accounting period of the company, the Board may—

(a) accept the same and make an assessment accordingly; or

(b) refuse to accept the same and proceed as provided in subsection (3) of this section upon any failure as therein mentioned and the like consequences shall ensue.

(3) Where, for any accounting period of a company, the company has failed to deliver accounts and particulars provided for in section 30 of this Act within the time limited by that section or has failed to comply with any notice given to it under the provisions of section 31 or 32 of this Act within the time specified in such notice or within any extended time provided for in section 34 of this Act and the Board is of the opinion that such company is liable to pay tax, the Board may estimate the amount of the tax to be paid by such company for that accounting period and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver such accounts and particulars or to comply with such notices; and nothing in this subsection shall affect the right of the Board to make any additional assessment under the provisions of section 36 of this Act.

36. Additional assessments

(1) If the Board discovers or is of the opinion at any time that, with respect to any company liable to tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at a less amount than that which ought to have been charged and assessed for any accounting period of the company, the Board may within six years after the expiration of that accounting period and as often as may be necessary, assess such company with tax for that accounting period at such amount or additional amount as in the opinion of the Board ought to have been charged and assessed, and may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.

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

(3) For the purpose of computing under subsection (1) of this section the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all relevant facts consistent with subsection (3) of section 43 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the company for that accounting period was being made or could have been made.

(4) Notwithstanding the other provisions of this section, where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act, the Board may, at any time and as often as may be necessary, assess the company on such

amount as may be necessary for the purpose of recovering any loss of tax attributable to the fraud, wilful default or neglect. [1996 No. 30.]

37. Making of assessments, etc.

(1) Assessments of tax shall be made in such form and in such manner as the Board shall authorise and shall contain the names and addresses of the companies assessed to tax or of the persons in whose names any companies (with the names of such companies) have been assessed to tax, and in the case of each company for each of its accounting periods, the particular accounting period and the amount of the chargeable profits of and assessable tax and chargeable tax for that period.

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

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

38. Notices of assessment, etc.

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

(2) If any person in whose name an assessment was made in accordance with the provisions of this Act disputes the assessment, that person may apply to the Board, by notice of objection in writing, to review and revise the assessment so made on him; and such application shall be made within 21 days from the date of service of the notice of such assessment and shall state the amount of chargeable profits of the company of the accounting period in respect of which the assessment is made and the amount of the assessable tax and the tax which such person claims should be stated on the notice of assessment.

(3) The Board, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of 21 days, shall extend the period as may be reasonable in the circumstances.

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

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

(6) If an applicant for revision under the provisions of subsection (2) of this section fails to agree with the Board the amount of the tax, the Board shall give such applicant notice of refusal to amend the

assessment as desired by such applicant, and may revise the assessment to such amount as the Board may determine and give such applicant notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this subsection.

39. Errors and defects in assessment and notice

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

(2) An assessment shall not be impeached or affected—

- (a) by reason of a mistake therein as to—
 - (i) the name of a company liable or of a person in whose name a company is assessed; or
 - (ii) the amount of the tax;
- (b) by reason of any variance between the assessment and the notice thereof,

if in cases of assessment, the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made.

40. Income tax computation

(1) Notwithstanding anything to the contrary in any law, all income tax computation made under sections 28 and 31 of this Act shall be made in the currency in which the transaction was effected.

[1996 No. 30.]

(2) Accordingly and notwithstanding anything to the contrary in any law, any assessment made under section 35 (1) of this Act shall also be made in the currency in which the computation giving rise to the assessment was made.

PART VIII

Appeals

41. Appeals to Appeal Commissioners

(1) Any person (being a company or a person in whose name a company is assessed) being aggrieved by an assessment made upon him, who has failed to agree with the Board as referred to in section 38 (6) of this Act, may appeal against the assessment to the appropriate Appeal Commissioners upon giving notice in writing to the Board and to the secretary to such Commissioners within thirty days after the date of service upon him of notice of the refusal of the Board to amend the assessment as desired:

Provided that notwithstanding the lapse of such period of thirty days, by not more than a further period of sixty days, such person may appeal against the said assessment if he gives such Commissioners the particulars mentioned in paragraphs (a) to (c) inclusive of subsection (2) of this section and if he shows to their satisfaction that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the Commissioners being so satisfied, such person shall give such notice in writing to the Board and to such secretary within seven days thereof.

(2) A notice of an appeal against an assessment, to be given under subsection (1) of this section, shall specify the following particulars—

- (a) the official number of the assessment and the accounting period for which it was made;
- (b) the amount of the tax charged by the assessment;
- (c) the date upon which the appellant was served with notice of refusal of the Board to amend the assessment as desired;
- (d) the precise grounds of his appeal against the assessment; and
- (e) an address for service of any notices, precepts or other documents to be given, by the secretary to the appropriate Appeal Commissioners, to the appellant:

Provided that at any time the appellant may give notice to such secretary and to the Board, by delivering the same or by registered post, of a change of such address but any such notice shall not be valid until delivered or received.

(3) For the purposes of this section, the appropriate Appeal Commissioners and their secretary to whom an appellant may give notice of appeal against an assessment under subsection (1) of this section shall be the body of Appeal Commissioners, if any, established, under the provisions of section 53 (1) of the Companies Income Tax Act, for the area in which is situated the office of the Federal Inland Revenue Service from which the notice of that assessment was issued.

[Cap. C21.]

(4) For the purposes of this Act, the provisions of sections 54 and 55 of the Companies Income Tax Act shall apply in like manner as they apply to the provisions of the last-mentioned Act.

(5) The provisions of subsection (5), (7), (8) and (9) of section 42 of this Act shall apply to an appeal under this section with any necessary modifications.

(6) All appeals shall be heard in camera.

(7) The Minister may make rules prescribing the procedure to be followed with respect to precepts and other like documents to be issued on behalf of Appeal Commissioners, for the examination of witnesses and in the conduct of appeals before them.

(8) Pending the making of any rules under subsection 7 of this section, any rules made or to be made (or any rules replacing any such rules) under section 55 (12) of the Companies Income Tax Act shall apply to any appeal or to any such procedure for the purposes of this section and Act with any necessary modifications.

42. Appeals to Federal High Court against assessments

(1) Any person (being a company or a person in whose name a company is assessed) who, having appealed against an assessment made upon him to the appropriate Appeal Commissioners under the provisions of section 41 of this Act, is aggrieved by the decision of such Commissioners may appeal against the assessment and such decision to the Federal High Court upon giving notice in writing to the Board within thirty days after the date upon which such decision was given.

(2) Notwithstanding the lapse of such period of thirty days by not more than a further period of sixty days, such person may appeal against the said assessment and decision if he shows to the satisfaction of the judge that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the judge being so satisfied such person shall give such notice in writing to the Board within seven days thereof.

(3) Where no appropriate body of Appeal Commissioners has been appointed with jurisdiction to hear an appeal, against an assessment made upon any person, under the provisions referred to in subsection (3) of section 41 of this Act, such person being aggrieved by the assessment and having failed to agree with the Board as referred to in subsection (6) of section 36, may appeal against the assessment to the Federal High Court upon giving notice in writing to the Board within thirty days after the date of service upon him of notice of the refusal of the Board to amend the assessment as desired and the provisions of subsection (2) of this section, so far as they are applicable, shall apply.

(4) If the Board is dissatisfied with a decision of any Appeal Commissioners, it may appeal against the decision to the Federal High Court upon giving notice in writing to the other party to the appeal under section 41 of this Act upon which such decision was given, within thirty days after the date upon which such decision was given and the provisions of this section, so far as they are applicable, shall apply to any such appeal to the Federal High Court by the Board.

(5) Every company appealing shall appoint an authorised representative who shall attend before the court in person on the day and at the time fixed for the hearing of its appeal, but if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness or other reasonable cause any duly appointed representative is prevented from attending in person at the hearing of the company's appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for such reasonable time as he thinks necessary for the attendance of the appellant's representative, or he may admit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement.

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

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

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

(9) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by a duly authorised representative of the Board either personally on, or by registered post to, the appellant.

(10) Notwithstanding anything contained in section 47 of this Act, if in any particular case, the judge from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, he may on application being made by or on behalf of the Board require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.

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

(12) The costs of the appeal shall be at the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.

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

(b) Pending the making of any rules under this subsection, the rules applicable in civil appeal cases from Magistrates Court to the High Court of Lagos State shall apply to any appeal or to any such procedure for the purposes of this section and Act with any necessary modifications.

(14) An appeal against the decision of the judge shall lie to the Court of Appeal—

(a) at the instance of the appellant where the decision of the judge is to the effect that the correct assessment of tax is in the sum of N1,000 or upwards; and

(b) at the instance of the Board where the decision of the judge is in respect of a matter in which the Board claimed that the correct assessment of tax was in the sum of N1,000 or upwards.

43. Assessment to be final and conclusive

(1) Where no valid objection or appeal has been lodged within the time limited by section 38, 41 or 42 of this Act, as the case may be, against an assessment as regards the amount of the tax assessed thereby, or where the amount of the tax has been agreed to under subsection (5) of section 38 of this Act, or where the amount of the tax has been determined on objection or revision under subsection (6) of section 38 of this Act, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such tax, and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 42 of this Act, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under any claim, made under any provisions of this Act, which has been agreed to by the Board or determined on any appeal against a refusal to admit any such claim.

(2) Where an assessment has become final and conclusive, any tax overpaid shall be repaid.

(3) Nothing in section 38 of this Act or in this Part shall prevent the Board from making any assessment or additional assessment to tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period, under subsection (5) or (6) of section 38 of this Act by agreement or otherwise or on appeal.

PART IX

Collection, recovery and repayment of tax

44. Procedure in cases where objection or appeal is pending

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

45. Time within which payment is to be made

(1) Subject to the provisions of section 44 of this Act, tax for any accounting period shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4) of this section.

(2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or, where the accounting period is less than a year, in an amount equal to equal monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with section 33 (1) of this Act.

(3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) of this section shall be due and payable not later than the last day of the month in question and shall be in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with section 33 (2) of this Act less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period.

(4) A final statement of tax shall be due and payable within 21 days after the service of the notice of assessment of tax for such accounting period, and shall be the amount of the tax assessed for that accounting period less so much thereof as has already been paid under subsections (2) and (3) of this section or is the subject of proceedings.

(5) Any instalments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purposes of sections 46 and 48 of this Act.

(6) For the purposes of subsection (1) of this section, the conversion of the timing of payments of tax to provide for the making of monthly payments shall be given effect to as set out in the Third Schedule of this Act.

[Third Schedule.]

46. Penalty for non-payment of tax and enforcement of payment

(1) If any instalment of tax due and payable pursuant to section 41 is not paid within the appropriate time limit prescribed in section 45 of this Act—

(a) a sum equal to five per cent of the amount of the instalment of tax due and payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;

(b) the Board shall cause to be served a demand note upon the company assessed or upon the person in whose name the company is assessed; and if payment is not made within one month from the date of the service of such demand note, the Board may proceed to enforce payment as hereinafter provided;

(c) a penalty imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of any of the provisions of this Act, other than those relating to enforcement and collection of any tax.

(2) Any company or person in whose name the company is assessed who without lawful justification or excuse, the proof whereof shall lie on the company, or such person assessed, fails to pay the tax within the period of one month prescribed in subsection (1) (b) of this section, shall be guilty of an offence.

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

47. Collection of tax after determination of objection or appeal

Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal as the case may be shall be payable forthwith as to any part thereof in proceedings stayed pending such determination and as to the balance thereof within one month from the date of service on the company assessed, or on the person in whose name the company is assessed, of the notification of the tax payable, and if such balance is not paid within such period the provisions of section 42 of this Act shall apply.

48. Suit for tax by the Board

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

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

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

49. Relief in respect of error or mistake

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

(2) On receiving any such application the Board shall inquire into the matter and subject to the provisions of this section shall by way of repayment of tax give such relief in respect of the error or mistake as appears to the Board to be reasonable and just.

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

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

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

50. Repayment of tax

(1) Save as is otherwise in this Act expressly provided, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates and if the Board disputes any such claim it shall give to the claimant notice of refusal to admit the claim and the provisions of sections 36 and 37 of this Act shall apply with any necessary modifications.

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

PART X

Offences and penalties

51. Penalty for offences

(1) Any person guilty of an offence against this Act or of any rule made thereunder for which no other penalty is specifically provided, shall be liable to a fine of N10,000, and where such offence is one under subsection (1) of section 24 of this Act, or is a failure to submit a return under section 33 of this Act or is a failure, arising from the provisions of Part VI of this Act, to deliver accounts, particulars or information or to keep records required, a further sum of N2,000 for each and every day during which such offence or failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

(2) Any person who—

- (a) fails to comply with the requirements of a notice served on him under this Act; or
- (b) having a duty so to do, fails to comply with the provisions of section 30 of this Act; or

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

(d) fails to submit any return required to be submitted by section 29 of this Act in accordance with that section or in accordance with that section and section 34 of this Act,

shall be guilty of an offence.

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

52. Penalty for making incorrect accounts, etc.

(1) Every person who without reasonable excuse—

(a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses of which he is required by this Act to make up accounts; or

(b) prepares or causes to be prepared any incorrect schedule required to be prepared by section 30 of this Act by overstating any expenditure or any incorrect statement required to be prepared by section 30 of this Act by overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released; or

(c) gives or causes to be given any incorrect information in relation to any matter or thing affecting his liability to tax,

shall be guilty of an offence and shall be liable to a fine of N1,000 and double the amount of tax which has been undercharged in consequence of such incorrect accounts, schedule, statement or information, or would have been so undercharged if the accounts, schedule, statement or information had been accepted as correct.

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made at any time within six years after the end of the accounting period in respect of which the offence was committed.

(3) The Board may compound any offence under this section, and may before judgment stay or compound any proceedings thereunder.

53. False statements and returns

(1) Any person who—

(a) for the purpose of obtaining any deduction, rebate, reduction or repayment in respect of tax for himself or for any other person, or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation, or forges or fraudulently alters or uses, or fraudulently lends, or allows to be used by any other person any receipt or token evidencing payment of the tax under this Act; or

(b) aids, abets, assists, counsels, incites or induces any other person—

(i) to make or deliver any false return or statement under this Act;

(ii) to keep or prepare any false accounts or particulars affecting tax; or

- (iii) unlawfully to refuse or neglect to pay tax,

shall be guilty of an offence and shall be liable to a fine of N1,000 and treble the amount of tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months, or to both such fine and imprisonment.

(2) The Board may compound any offence under this section and with the leave of the court may before judgment stay or compound any proceedings thereunder.

54. Penalty for failure to withhold tax

(1) Any person who, being required to deduct withholding tax under this Act, fails to deduct or, having deducted, fails to remit to the Federal Inland Revenue Service within 30 days from the date the amount was deducted or the time the duty to deduct arose shall be guilty of an offence and liable on conviction to a fine of 200% of the tax not withheld or not remitted plus interest at the prevailing commercial rate.

[1996 No. 31.]

(2) The relevant tax authority shall cause thopo be served on or sent by registered post to any person who fails to withhold or, if withheld, fails to remit the amount required to be withheld, a notice stating the amount of tax not withheld or not remitted and the place at which payment should be made, and the provisions of this Act relating to tax assessment and recovery shall apply.

55. Penalties for offences by authorised and unauthorised persons

(1) Any person who—

(a) being a member of the Board charged with the due administration of this Act or any assistant employed in connection with the assessment and collection of the tax who—

(i) demands from any person an amount in excess of the authorised assessment of the tax payable;

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

(iii) renders a false return, whether verbal or in writing, of the amounts of tax collected or received by him;

(iv) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the Board or any other individual; or

(b) not being authorised under this Act to do so collects or attempts to collect the tax under this Act,

shall be guilty of an offence and be liable to a fine of N600 or to imprisonment for three years or both.

56. Deduction of tax at source

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

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

(3) A company which has deducted tax under this section shall forward to the Board the amount of tax deducted and shall also forward a statement showing the name and address of the person who suffered the tax deduction and the nature of activities or services in respect of which any payment was made.

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

57. Tax to be payable notwithstanding any proceedings for penalties

The institution of proceedings for or the imposition of, a penalty, fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any tax for which he is or may become liable.

58. Prosecution to be with the sanction of the Board

No prosecution in respect of an offence under sections 5, 52, 53 or 55 of this Act may be commenced, except at the instance of or with the sanction of the Board.

59. Saving for criminal proceedings

The provisions of this Act shall not affect any criminal proceedings under any other Act or law.

PART XI

Miscellaneous

60. Restrictions on effect of the Personal Income Tax Act and other Acts

No tax shall be charged under the provisions of the Personal Income Tax Act or any other Act in respect of any income or dividends paid out of any profits which are taken into account, under the provisions of this Act, in the calculation of the amount of any chargeable profits upon which tax is charged, assessed and paid under the provisions of this Act.

[Cap. P8.]

61. Double taxation arrangements with other territories

(1) If the Minister by order declares that arrangements specified in the order have been made with the Government of any territory outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any enactment.

(2) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.

(3) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for accounting periods commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.

(4) Where, before the publication of this Act in the Federal Gazette upon enactment, any order has been made under the provisions of section 33 of the Income Tax Act and the arrangements specified in that order, with any modifications, are expressed to apply to a tax in a territory outside Nigeria and to income tax in Nigeria and to any other taxes of a substantially similar character either imposed in that territory or Nigeria or imposed by either contracting party to any such arrangements after those arrangements came into force and— [Cap. 85 of the 1958 Laws of Nigeria.]

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

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

and where any arrangements, to which this subsection applies, contain a provision for exchange of information with the Commissioner of Income Tax or the Commissioner as defined in section 2 of the Income Tax Act then the order, with respect to those arrangements, as deemed to have been made under this section, shall be deemed to provide for such exchange with the chairman of the Board as respects tax. [Cap. 85 of the 1958 Laws of Nigeria.]

(5) The Minister may by order replace or vary any order deemed to have been made under this section for the purposes of this Act, without otherwise affecting such last-mentioned order for the purpose of any other Act.

62. Method of calculating relief to be allowed for double taxation

(1) The provisions of this section shall have effect where, under arrangements having effect under section 61 of this Act, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria; and in this section the expression “foreign tax” means any tax payable in that territory which, under the arrangements, is to be so allowed, and “income” means that part of the profits of any accounting period which is liable to both tax and foreign tax, before the deduction of any tax, foreign tax, credit therefor or relief granted under subsection (6) of this section.

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

(3) The credit for an accounting period shall not exceed whichever is the less of the following amounts, that is to say—

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

(b) the amount of the difference between the tax chargeable under this Act (before allowance of credit under any arrangements having effect under section 61 of this Act) and the tax which would be so chargeable if the income were excluded in computing profits.

(4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a company for any accounting period for foreign tax under all arrangements having effect under section 61 of this Act shall not exceed the total tax which would be ultimately borne by that company, for that accounting period, if no such credit had been allowed.

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

(6) Where the amount of the foreign tax attributable to the income exceeds the credit therefor computed under subsection (3) of this section, then the amount of that income, to be included in computing profits for any purpose of this Act other than that of subsection (3) of this section, shall be taken to be the amount of that income increased by the amount of the credit therefor after deduction of the foreign tax.

(7) Where—

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

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

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

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

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

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

63. Power to amend the First Schedule

At any time after the enactment of this Act, the Minister may by order delete any of the powers or duties specified in the First Schedule or include therein additional powers or duties and may do so by amendment of such Schedule or by substituting a new Schedule therefor.

First Schedule [Section 3 (e), 4 and 62.]

Powers or duties to be performed or exercised by the Board alone

The powers or duties specified in or imported into the following sections of this Act (other than such part of any powers or duties as consist of a power or duty to make enquiries or other incidental or preparatory powers or duties of a like nature) shall only be performed or exercised by the Board, who shall have no power to authorise any other person to perform the same, namely, powers or duties in sections 3 (b), (d) and (e), 6 (2), 10 (1) (k), 13 (3) (c), 15, 31 (2), 33 (1), 37 (1), 49, 52, 53 and 58 of this Act.

Second Schedule [Sections 10, 20 and 30.]

Capital allowances

ARRANGEMENT OF PARAGRAPHS

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7. Asset to be in use at end of accounting period.
8. Balancing allowances.
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12. Value of an asset.
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15. Extension of meaning of "in use".
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18. Disposal without change of ownership.

1. Interpretation

(1) For the purposes of this Schedule, unless the context otherwise requires—

“concession” includes an oil exploration licence, an oil prospecting licence, an oil mining lease, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

“lease” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including “leasehold interest” shall be construed accordingly; and—

(a) where, with the consent of the lessor, a lessee of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and

(b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease;

[1973 No. 15.]

“qualifying expenditure” means, subject to the express provisions of this Schedule, expenditure incurred in an accounting period which is—

(a) capital expenditure (hereinafter called “qualifying plant expenditure”) incurred on plant, machinery or fixtures;

(b) capital expenditure (hereinafter called “qualifying pipeline and storage expenditure”) incurred on pipelines and storage tanks;

(c) capital expenditure (hereinafter called “qualifying building expenditure”), other than expenditure which is included in paragraphs (a), (b) or (d) of this interpretation, incurred on the construction of buildings, structures or works of a permanent nature; or

(d) capital expenditure (hereinafter called “qualifying drilling expenditure”) other than expenditure which is included in paragraph (a) or (b) of this interpretation, incurred in connection with, or with petroleum operations in view of—

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

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

(iii) the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed cease to be carried on:

Provided that, for the purposes of this definition qualifying expenditure shall not include any sum which may be deducted under the provisions of section 10 of this Act.

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

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

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

2. Provisions relating to qualifying petroleum expenditure

(1) For the purposes of this Schedule where—

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

(b) such expenditure has not brought into existence an asset,

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

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

(3) So much of any qualifying petroleum expenditure incurred on the acquisition of rights in or over petroleum deposits and on the purchase of information relating to the existence and extent of such deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information shall be left out of account for the purposes of this Schedule:

Provided that where the company which originally incurred such costs was a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale thereof, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

3. Owner and meaning of relevant interest

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

(2) Subject to the provisions of this paragraph, in this Schedule, the expression “the relevant interest” means, in relation to any expenditure incurred on the construction of a building, structure or works, the

interest in such building, structure or works to which the company which incurred such expenditure was entitled when it incurred the expenditure.

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

4. Sale of buildings, etc.

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the company which buys that interest shall be deemed, for all the purposes of this Schedule except the granting of petroleum investment allowance, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction, whichever is the less:

Provided that—

(a) where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sale with the omission of the words “except the granting of petroleum investment allowance” and the original cost of construction shall be taken to be the amount of the purchase price on such sale;

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

5. Petroleum investment allowance

(1) For the purposes of this Act and subject to the provisions of this Schedule, where a company has incurred any qualifying capital expenditure wholly, exclusively and necessarily for the purposes of petroleum operations carried out by it, there shall be due to that company, for the accounting period in which that asset was first used or for the purposes of such operations, an allowance (in this Schedule called “Petroleum Investment Allowance”) at the appropriate rate per cent, set forth in Table 1 to this Schedule, of such expenditure.

(2) For the purpose of this Act, the Petroleum Investment Allowance shall be added to the annual allowance computed under paragraph 6 of this Schedule and shall be subject to the same rules under this Act.

6. Annual allowance

(1) Subject to the provisions of this Schedule, where in any accounting period, a company owning any assets has incurred in respect thereof qualifying expenditure wholly, necessarily and exclusively for the purposes of petroleum operations carried on by it, there shall be due to that company as from the accounting period in which such expenditure was incurred, an allowance (in this Act referred to as “an annual allowance”) at the appropriate rate per centum specified in Table II of this Schedule.

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

(3) Any asset or part thereof in respect of which capital allowances have been granted may only be disposed of on the authority of a Certificate of Disposal issued by the Minister or any person authorised by him.

(4) Any unrecovered capitalised expenditure prior to 1 April 1977 shall be deemed to have been capitalised with effect from 1 April 1977 and shall, as provided for in sub-paragraph (1) of this paragraph, be amortised in five equal instalments and shall be subject to the provisions of sub-paragraphs (2) and (3) of this paragraph.

7. Asset to be in use at end of account period

An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any accounting period if at the end of such accounting period it was the owner of that asset and the asset was in use for the purposes of the petroleum operations carried on by it.

8. Balancing allowances

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset an allowance (hereinafter called "a balancing allowance") shall be due to that company for that accounting period of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred.

9. Balancing charges

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset, the excess (hereinafter called "a balancing charge") of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date shall, for the purposes of subsection (1) (a) of section 9 of this Act, be treated as income of the company of that accounting period:

Provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred and shall not exceed the total of any allowances due under the provisions of this Schedule, in respect of such asset.

10. Residue

The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of

that asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

11. Meaning of “disposed of”

Subject to any express provision to the contrary, for the purposes of this Schedule—

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

(i) the relevant interest is sold; or

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

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

(iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;

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

(c) assets in respect of which qualifying drilling expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the petroleum operations of the company incurring the expenditure either on such company ceasing to carry on all such operations or on such company receiving insurance or compensation monies therefor.

12. Value of an asset

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

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

13. Apportionment

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

bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

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

14. Part of an asset

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

15. Extension of meaning of "in use"

(1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.

(2) For the purposes of paragraphs 5, 6 and 7 of this Schedule—

(a) an asset in respect of which qualifying expenditure has been incurred by the owner thereof for the purposes of petroleum operations carried on by him shall be deemed to be in use for the purposes of such operations, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by that owner incurring such expenditure will be for the purposes of such operations;

(b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where any allowances have been given in consequence of this sub-paragraph (2) of this paragraph and the first use to which such asset is put is not for the purposes of such operations, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

16. Exclusion of certain expenditure

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

(2) Where any company has incurred expenditure upon any ocean going oil tanker plying between Nigeria and any other territory that expenditure shall not be treated as qualifying expenditure.

17. Asset used or expenditure incurred partly for the purpose of petroleum operations

(1) The following provisions of this paragraph shall apply where, either or both of the following conditions apply with respect to any asset—

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

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

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

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

18. Disposal without change of ownership

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

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

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

TABLE I

[Paragraph 5.]

Qualifying expenditure in respect of Rate per centum

On-shore operations 5

Operations in territorial waters and continental shelf areas up to and including 100 metres of water depth 10

Operations in territorial waters and continental shelf areas in water depth between 100 metres and 200 metres 15

Operations in territorial waters and continental shelf areas beyond 200 metres of water depth
20

TABLE II

[Paragraph 6.]

Annual allowance	Rate per centum
First year	20
2nd year	20
3rd year	20
4th year	20
5th year	19
6th year and after	19

Third Schedule

[Section 45.]

Time for payments

1. In respect of the company's petroleum operations for the 1971 accounting period, 50% of the tax shall continue to be payable in instalments on the basis set out in section 45; the remaining 50% of the tax shall be payable in six consecutive monthly instalments on the basis set out in section 45 (6) (b), the first of such instalments being due not later than 30 September 1971.
2. In respect of the company's petroleum operations for the 1972 accounting period, 25% of the tax shall continue to be payable in instalments on the basis set out in section 42; the remaining 75% of the tax shall be payable in monthly instalments.
3. In respect of the company's petroleum operations for the 1973 accounting period and of each subsequent accounting period, the tax due for each such year shall be payable in monthly instalments.

Fourth Schedule

[Section 9 (1) (c).]

1. Interpretation of Fourth Schedule

For the purposes of this Schedule, unless the context otherwise requires—

“contract capacity” means the maximum quantity of natural gas expressed in MMcf to which a customer of a company is entitled in the accounting period under an individual gas sales contract between the company and such customer;

“gas take” means the actual quantity of natural gas expressed in MMcf actually taken or paid for by a customer in the accounting period under an individual gas sales contract between the company and a customer of the company.

2. Ascertainment of G-Factor

(1) The value of all chargeable natural gas in the accounting period shall be the sum of gross proceeds under individual gas sales contracts in the accounting period less the G-Factor allowance as applicable to any such individual gas sales contracts at the appropriate rate per cent of such proceeds under any such individual gas sales contracts as specified in the Table to this Schedule.

(2) G-Factor per centum in respect of factors in between the figures mentioned in the Table to this Schedule shall be calculated on pro-rata basis.

3. Power of review

The Government of the Federation may from time to time review the G-Factor allowance specified in the Table to this Schedule.

TABLE

Load factor	G-Factor per centum
50	16.9
60	15.5
70	14.3
80	13.6

CHAPTER P13
PETROLEUM PROFITS TAX ACT
SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Chargeable Persons Partnership (Monipulo Limited and Brass Exploration Unlimited) Rules.

Chargeable persons partnership (Monipulo Limited and Brass Exploration Unlimited) rules

[S.I. 15 of 2002.]

under section 22 (2) and (3)

[1st January, 2002]

[Commencement.]

1. Maintaining common books of accounts, etc., by Monipulo Limited and Brass Exploration Unlimited

As from the commencement of these Rules, the companies known as Monipulo Limited and Brass Exploration Unlimited (in these Rules referred to as “the Joint Venture Partnership”) shall maintain common books of accounts, records and inventories of the joint venture in accordance with the existing tax laws and regulations and accounting procedures.

2. Consolidated accounts and returns

The Joint Venture Partnership shall prepare consolidated accounts of the joint venture and render joint tax returns to the Federal Inland Revenue Service.

3. Payment of tax

The company known as Brass Exploration Unlimited, the technical partner and operator of the Joint Venture Partnership, shall pay the tax due and payable on behalf of the Joint Venture Partnership to the Federal Inland Revenue Service.

4. Citation

These Rules may be cited as the Chargeable Persons Partnership (Monipulo Limited and Brass Exploration Unlimited) Rules 2002.