

SEYCHELLES PETROLEUM (TAXATION) ACT, 2008**ARRANGEMENT OF SECTIONS****Sections****PART I - PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation

PART II - PETROLEUM INCOME TAX**Division 1 - Imposition of Petroleum Income Tax**

4. Charge to petroleum income tax
5. Rate of petroleum income tax

Division 2 - Taxable Income and Allowable Loss

6. Computation of taxable income and allowable loss

Division 3 - Assessable Income

7. Assessable income from disposal of petroleum, etc.
8. Miscellaneous assessable income

Division 4 - Allowable Deductions

9. Limitation on allowable deductions
10. Apportionment of expenses in terms of operating agreement
11. Application of allowable deductions
12. Operation of Division in relation to expenditure incurred inside or outside Seychelles
13. Double deductions
14. Allowable deductions
15. Transactions not at arm's length
16. Allowable deduction in respect of assessable income under section 7(1)(d)
17. Allowable deduction in respect of bad debt

18. Allowable deduction in respect of trades tax
19. Allowable deductions in respect of certain assignments and sales
20. Allowable deduction in respect of allowable loss

Division 5 - Special provisions in relation to assignments and sales

21. Assignment and sales between related companies
22. Effect on section 19 of Controller acceding to request under section 21
23. Limitation on Controller's power to accede to request under section 21

PART III - PETROLEUM ADDITIONAL PROFITS TAX

24. Petroleum additional profits tax to be imposed by petroleum agreement
25. Charge to petroleum additional profits tax and rates of tax
26. Liability for payment of petroleum additional profits tax

PART IV - ASSESSMENT TO TAX AND DETERMINATION OF LOSS

27. Return in relation to petroleum income tax by assessable persons
28. Return in relation to petroleum additional profits tax
29. Contents of return
30. Failure to deliver a return
31. Production of accounts, books and other information
32. Incorrect returns, etc.
33. Assessment to petroleum income tax and determination of allowable loss, etc.
34. Assessment to petroleum additional profits tax, etc.
35. General provisions with respect to assessments
36. Further provisions with respect to assessments and determinations
37. Saving with respect to section 10
38. Additional assessments and determinations
39. Right of appeal
40. Payment and refund of tax

PART V - ADMINISTRATION AND MISCELLANEOUS

41. Management of the taxes
42. Power of Minister to give directions to the Controller
43. Performance of functions
44. Certain material to be treated as confidential
45. Disclosure of information
46. Obstruction of officials
47. Recovery of tax
48. Representatives
49. Restriction on law relating to income tax, etc.
50. Special arrangements for relief from double taxation
51. Regulations
52. Repeal
53. Savings

SCHEDULE 1: RETURNS FOR PETROLEUM INCOME TAX

SCHEDULE 2: RETURNS FOR PETROLEUM ADDITIONAL PROFITS TAX



**SEYCHELLES PETROLEUM (TAXATION)
ACT, 2008**

(Act No.23 of 2008)

I assent

J. A. Michel
President

31st October, 2008



AN ACT to amend and consolidate the law relating to petroleum taxation and to make provision for the charging of a further tax to be known as petroleum additional profits tax; to repeal the Petroleum Income Tax Decree; and for connected purposes.

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Seychelles Petroleum (Taxation) Act, 2008.

Short title

2. This Act shall come into operation upon such date as the President may, by notice published in the *Gazette*, appoint.

Commencement

Interpretation

3. (1) In this Act, unless the context otherwise requires -

"allowable deduction" means a deduction allowable under Division 4 of Part II;

"allowable loss" has the meaning given by section 6;

"assessable income" means all the amounts which under Division 3 of Part II are included in assessable income;

"assessable person", in respect of a tax year, means -

- (a) a person who was a party to a petroleum agreement in, or in any part of, that year; or
- (b) a person, not being a person to whom paragraph (a) applies, to whom assessable income accrued in that year;

"chargeable petroleum" means petroleum won under the authority of a petroleum agreement;

"company" means a body corporate incorporated in or outside Seychelles by or under any Act or any law;

"consideration" means consideration in money or money's worth;

"Controller" means the Revenue Commissioner appointed under the Seychelles Revenue Commission Act;

"Minister" means the Minister for Finance;

"party to a petroleum agreement" in respect of a tax year, includes any person who was a party to the agreement in that year, or in any part of that year, and a person who is the assignee of any such party;

"person" includes a company;

"petroleum" has the meaning given by section 2 of the Petroleum Mining Act, 1976;

"petroleum additional profits tax" means the tax referred to in section 24 and section 25;

"petroleum agreement" has the meaning given by section 2 of the Petroleum Mining Act, 1976;

"petroleum field" has the meaning given in a petroleum agreement;

"petroleum income tax" means the tax referred to in section 4;

"petroleum information" means geological, geophysical, geochemical, palaeontological or technical information, being all information that relates to the presence, absence or extent of deposits of petroleum in Seychelles, or any part thereof, or is likely to be of assistance in determining the presence, absence or extent of any such deposits;

"petroleum operations" means operations -

- (a) designated or defined as exploration, development or production operations under; or
- (b) within the definitions of exploration, development or production expenditure in,

the petroleum agreement under the authority of which the operations are, or are to be, carried on;

"relevant petroleum agreement" has the meaning given by section 24;

"royalty" means royalty under a petroleum agreement in respect of petroleum won and saved;

"Seychelles" means the territory of Seychelles as described in article 2 of the Constitution;

"tax year" means a calendar year beginning with the calendar year 2009;

"taxable income" has the meaning given by section 6.

(2) For the purposes of this Act, persons are associated with each other if -

- (a) one has, directly or indirectly, any interest in any business in which the other has, directly or indirectly, any interest; or
- (b) a third person has, directly or indirectly, both an interest in any business of one and an interest in any other business of the other.

PART II - PETROLEUM INCOME TAX

Division 1 - Imposition of petroleum income tax

Charge to
Petroleum
Income Tax

4. A tax, to be called petroleum income tax, shall be charged in accordance with this Act in respect of taxable income accruing to a person in a tax year.

Rate of
Petroleum
Income Tax

5. The petroleum income tax shall be charged at the rate of 35 per cent of the taxable income on which the tax is assessed in any tax year.

Division 2 - Taxable income and allowable loss

Computation of
taxable income
and allowable
loss

6. (1) The taxable income or, as the case may be, the allowable loss accruing to a person in a tax year shall be computed in accordance with this section.

(2) The taxable income or allowable loss so accruing is the difference (if any) between the assessable income accruing to the person in the tax year and the sum of the allowable deductions of the person for the tax year; and the difference (if any) is a taxable income if the assessable income is greater than the sum of the allowable deductions, and is otherwise an allowable loss.

Division 3 - Assessable income

Assessable
income from
disposal of
petroleum, etc.

7. (1) The assessable income accruing to a person in a tax year shall include -

- (a) the market value of so much of the person's chargeable petroleum disposed of by the person in sales at arm's length as was delivered by the

person in the tax year;

- (b) the market value of so much of the person's chargeable petroleum disposed of by the person otherwise than in sales at arm's length as was delivered by the person in the tax year;
- (c) the market value of so much of the person's chargeable petroleum as was appropriated by the person in the tax year to refining or other processing without being disposed of;
- (d) one-half of the market value of so much of the person's chargeable petroleum as the person had at the end of the tax year either -
 - (i) not disposed of and not appropriated to refining or other processing; or
 - (ii) disposed of but not delivered,

and which had not been lost or destroyed in the tax year; and

- (e) any amount received or receivable by the person under a policy of insurance or otherwise in respect of any loss or destruction of any of the person's chargeable petroleum in the tax year.

(2) For the purpose of this Act, a person's chargeable petroleum includes -

- (a) all of the petroleum (not being petroleum referred to in paragraph (c) or (d) of subsection 2) won and saved under the authority of a petroleum agreement during a period when the person was the sole party to the petroleum agreement; and
- (b) the person's share of petroleum (not being petroleum referred to in paragraph (c) or (d) of subsection 2) won and saved under the authority of a petroleum agreement when the person and one, or more than one, other person were parties to the petroleum agreement, determined on

either or both of the following principles, that is to say -

- (i) by reference to any operating agreement or operating agreements (howsoever described) deposited with the Controller and providing for the division of all the petroleum won and saved under the authority of that petroleum agreement or won and saved from a particular petroleum field under that authority, among those parties or among those parties and the Government or an agency of the Government, and no others;
- (ii) in the case of petroleum so won and saved with respect to which no such operating agreement providing for its division as aforesaid is deposited with the Controller, on the basis of the parties each being entitled to an equal share of each class of petroleum so won,

but does not include -

- (c) any petroleum which is delivered by the person pursuant to a petroleum agreement in discharge of the liability to pay royalty under the agreement; or
- (d) any petroleum to which the Government (or any agency of the Government) is entitled under any production sharing agreement or on account of its participation interest in any venture for the purpose of petroleum operations under a petroleum agreement, and which was delivered to the Government or its agent.

(3) Where a proportion of a person's chargeable petroleum (as distinct from a specific quantity of petroleum comprised in that share) is owned by another person (hereinafter in this subsection referred to as "the owner") who acquired it (whether directly or indirectly) under an agreement, then -

- (a) for the purposes of this section the petroleum acquired by the owner under the agreement shall be treated in every case as having been disposed of to him by the person otherwise than in a sale at arm's length; and
- (b) where any petroleum which the owner owns in right of the agreement is in pursuance of the agreement -
 - (i) delivered to the owner by the person; or
 - (ii) delivered to a third person by the person acting on behalf of the owner,

the delivery shall for the purposes of this section be regarded as a delivery by the person although the person does not own the petroleum.

(4) Subject to subsection (3), for the purposes of this section a sale of petroleum is a sale at arm's length if, but only if, the following conditions are satisfied with respect to the contract of sale, that is -

- (a) the contract price is the sole consideration for the sale;
- (b) the terms of the sale are not affected by any commercial relationship (other than that created by the contract of sale) between the seller or any other person associated with the seller and the buyer or any person associated with the buyer; and
- (c) neither the seller nor any person associated with him has, directly or indirectly, any interest in the subsequent resale or disposal of the petroleum or any product derived therefrom.

(5) For the purposes of subsection (1), the market value of any quantity of petroleum shall be -

- (a) determined in accordance with the relevant terms and conditions of the petroleum agreement under the authority of which the quantity of petroleum was won; or
- (b) where there are no such relevant terms and conditions in such a petroleum agreement, determined by the Controller by reference to the amount which would have been obtained in a sale at arm's length of the quantity of petroleum by a willing seller to a willing buyer.

Miscellaneous
assessable
income

8.(1) Subject to subsections (2), (3), (4) and (5), the assessable income accruing to a person in a tax year shall include -

- (a) the amount or value of the consideration in money or money's worth received or receivable by the person in respect of the assignment in the tax year of the interest, or any part of the interest, of the person in a petroleum agreement;
- (b) the amount or value of the consideration in money or money's worth received or receivable by the person in respect of sale in the tax year of petroleum information;
- (c) any amount received by the person in the tax year as or by way of insurance or indemnity in respect of any loss of income which would have been assessable income if the loss had not occurred;
- (d) any amount received by the person in the tax year by way of insurance, indemnity, recoupment, refund, recovery or reimbursement for or in respect of any amount of any expenditure that has been allowed or is allowable as a deduction from assessable income accruing to the person in any tax year;
- (e) any amount (not being assessable income under

any other provision in this Division) accruing in the tax year to the person as income from the carrying out of any of the person's petroleum operations under the authority of a petroleum agreement; and

- (f) any other amount accruing in the tax year to the person which is, under the terms and conditions of a petroleum agreement to which the person is a party, to be regarded as assessable income.

(2) Where any person carried out, or is to carry out, on behalf of any other person, work on land subject to a petroleum agreement, and the consideration, or any part of the consideration, for the person doing so is the assignment to the person of any part of the interest of the other person in that petroleum agreement, the value of that work is not assessable income accruing to the other person in any tax year; but without prejudice to consideration (if any), other than work, for the assignment being treated as assessable income.

(3) Where the interest or any part of the interest of a person in a petroleum agreement is assigned by way of charge or as security for a loan, the expenditure in relation to which is an allowable deduction under section 14(1)(e), that assignment is not an assignment for the purposes of subsection (1)(a) of this section.

(4) Subsection (1)(a) or (b) does not apply in any case in which section 21 applies in relation to an assignment or, as the case may be, a sale.

(5) Subsection (1)(d) does not apply to an amount which is an allowable deduction under section 16.

Division 4 - Allowable deductions

9.(1) No deduction shall be allowed under this Division in respect of-

- (a) any capital withdrawn or any sum employed or intended to be employed as capital;
- (b) any expenditure incurred in respect of a

Limitation on
allowable
deductions

pecuniary obligation incurred in obtaining a loan or any other form of credit, not being an allowable deduction under section 14(1)(c);

- (c) any expenditure incurred in respect of the acquisition of any land or an interest in any land, not being an allowable deduction under section 19;
- (d) any expenditure wholly or partly depending on or determined by reference to the quantity, value or proceeds of, or the profits from, petroleum won under the authority of a petroleum agreement, not being an allowable deduction under section 14(1)(f);
- (e) any expenditure incurred for the purpose of obtaining a direct or indirect interest in petroleum won under the authority of a petroleum agreement, not being an allowable deduction under section 19;
- (f) any expenditure incurred in respect of improvements as distinct from repairs;
- (g) any expenditure incurred in respect of rent for land or buildings, not being an allowable deduction under section 14(1)(c);
- (h) any expenditure incurred in respect of contributions to a fund or scheme, not being a fund or scheme that is prescribed;
- (i) any expenditure to the extent that it is incurred to produce income which, under section 7, is not assessable income; or
- (j) any payment in respect of any tax charged under this Act, or income tax, profits tax or other similar tax whether charged in Seychelles or elsewhere.

(2) Subject to section 20, where a person is an assessable

person in respect of any tax year by reason of becoming a party to a petroleum agreement in that tax year, then for the purpose of computing petroleum income tax, no deduction shall be allowed under this Division to the person for the tax year in respect of expenditure to the extent that the expenditure is or was incurred in the tax year in respect of any matter or thing done or occurring, or in respect of any period, before the date on which the person became a party to that agreement.

(3) Where a person is a party to a petroleum agreement, no deduction shall be allowed under this Division to the person in respect of expenditure incurred under, for the purpose of, or pursuant to, the agreement, to the extent that such expenditure is under the agreement declared not to be allowable as a deduction.

(4) The other provisions in this Division shall be read subject to this section.

10.(1) Where two or more persons who are joint parties to a petroleum agreement have entered into and lodged with the Controller an operating agreement, howsoever described, providing for -

- (a) the apportionment among them of expenditure; or
- (b) the reimbursement to any person, who may or may not be one of those parties, of expenditure,

incurred in carrying on petroleum operations under the authority of the petroleum agreement then, in respect of a tax year in which the operating agreement has effect, the right of a person who is one of those parties to claim in respect of those petroleum operations a deduction allowable under this Division is subject to and shall be exercised in accordance with the operating agreement.

(2) An operating agreement shall have effect for the purposes of this section in respect of the tax year in which it is lodged with the Controller, and in respect of any subsequent tax year, but shall so cease to have effect in respect of any tax year

Apportionment
of expenses in
terms of
operating
agreement

in which a notice in writing signed by one, or more than one, party to the agreement withdrawing the agreement is lodged with the Controller, and in respect of tax years subsequent to the year of such withdrawal.

(3) The withdrawal of an operating agreement does not prejudice the right to lodge under this section a further agreement.

Application of
allowable
deductions

11. Where in a tax year assessable income such as is referred to in paragraph (a) or (b) of section 8 (1), and other assessable income, accrues to a person, the allowable deductions of the person for that year shall be deducted in the following sequence, namely -

- (a) from income of the kind referred to in either of those paragraphs there shall be deducted a portion of those allowable deductions which bears to the sum of those deductions the same proportion as the income of the kind so referred to bear to all the assessable income so accruing;
- (b) from the other assessable income there shall be deducted the other part of those deductions;
- (c) from any income of the kind so referred to or, as the case may be, any other assessable income that remains after the application of paragraph (a) or (b) of this section, there shall be deducted any allowable deduction not absorbed by applying those paragraphs.

Operation of
Division in
relation to
expenditure
incurred inside
or outside
Seychelles

12.(1) Subject to subsection (2), this Division shall have effect in relation to expenditure incurred by a person whether it is incurred inside or outside Seychelles.

(2) Where expenditure is incurred by a person in a tax year in respect of the cost of the administration outside Seychelles of the business of the person (including expenditure in respect of rent, overheads and general administration), that expenditure, if otherwise an allowable deduction under this Division, shall be an allowable deduction only to the extent that the relevant petroleum agreement so provides or, if the relevant petroleum

agreement makes no such provision, only to the extent that the Controller considers the expenditure to be just and reasonable having regard to the cost involved, or to the cost involved and the extent of the petroleum operations of the person, and to fair business practices in the oil industry.

13.(1) Where, in respect of any amount, a deduction would, but for this subsection, be allowable under more than one provision of this Division and whether it would be so allowable in respect of the same or different tax years, the amount shall not be allowed as a deduction more than once or on more than one occasion.

Double
deductions

(2) Where an amount of expenditure has been allowed as a deduction in computing the taxable income or allowable loss accruing to any person in a tax year it shall not be so allowed in computing the taxable income or allowable loss accruing to the person in any other tax year or accruing to any other person in that or any other tax year.

14.(1) Subject to this Division and subsections (2) and (3), the amount of any expenditure (including expenditure of a capital nature) being -

Allowable
deductions

- (a) expenditure (other than expenditure of a kind specifically referred to in any provision in this Division) necessarily incurred by a person in a tax year in or for the purpose of carrying on the person's petroleum operations under the authority of a relevant petroleum agreement;
- (b) expenditure necessarily incurred by a person in a tax year for repairs to any premises, plant, machinery, implements, utensils or articles held, occupied or used by the person for the purpose of carrying on such petroleum operations;
- (c) expenditure necessarily incurred by a person in a tax year in respect of rent for land or buildings occupied for the purpose of carrying on such petroleum operations;

- (d) expenditure incurred by a person in a tax year in respect of payment of contributions to a fund or a scheme that is prescribed, in relation to a person employed by the person for the purpose of carrying on such petroleum operations;
- (e) expenditure incurred by a person in a tax year in respect of interest on, or in borrowing or obtaining, a loan or other form of credit for all operations under the petroleum agreement;
- (f) expenditure incurred by a person in a tax year in respect of royalty under a petroleum agreement;
- (g) expenditure incurred by a person in a tax year in respect of payments in the nature of a bonus made under a petroleum agreement.

shall be an allowable deduction of the person for the tax year.

(2) The amount of any expenditure incurred by a person in respect of interest on, or in borrowing or obtaining, any loan or other form of credit shall not be an allowable deduction of the person unless the Controller is satisfied that the loan or credit has been or is being used for the purpose of carrying on the person's petroleum operations under the authority of a petroleum agreement.

(3) The reference in subsection (1)(c) to buildings occupied for the purposes of carrying on the person's petroleum operations under the authority of a petroleum agreement includes a reference to residential premises in Seychelles occupied by employees of the person who are engaged in carrying on those operations for the person.

15. Where under an agreement or an arrangement any person incurs expenditure which would be an allowable deduction of the person for a tax year, but the Controller is satisfied -

- (a) that the person and the other party to the agreement or arrangement were associated with each other and as a result they were not dealing with each other at arm's length; and

Transaction not at arm's length

- (b) that a lesser amount of expenditure (determined by the Controller) would have incurred under the agreement or arrangement if they had been so dealing with each other.

the amount of the deduction allowable to the person for the tax year in respect of the expenditure under the agreement or arrangement shall be the amount determined pursuant to paragraph (b) by the Controller.

16. Where, pursuant to section 7 (1) (d), an amount has been included in the assessable income accruing to a person in a tax year, that amount shall be an allowable deduction of the person for the subsequent tax year.

Allowable deduction in respect of assessable income under section 7(1)(d)

17. The amount of any debt -

- (a) which is a bad debt and is written off as such by a person in a tax year; and
- (b) which has been brought to account as assessable income accruing to the person in any previous tax year,

Allowable deduction in respect of bad debt

shall be an allowable deduction of the person for the tax year in which it is so written-off.

18.(1) Subject to this section, the amount of any expenditure incurred by a person in a tax year in respect of trades tax on an article, being plant, storage tanks, pipelines, tools, machinery or equipment essential for carrying on the person's petroleum operations under the authority of a petroleum agreement, imported into Seychelles shall be an allowable deduction of the person for the tax year; except in any case where, when the article was ordered, an article of like quality was available for sale in Seychelles at a price less than or equivalent to the price, including the cost of shipment and trades tax paid or payable on the article so imported.

Allowable deduction in respect of trades tax

(2) This section shall not apply to any article in respect of which an exemption from trades tax is granted under any law, and shall not apply even if that exemption is inoperative in any

and shall not apply even if that exemption is inoperative in any particular case by reason of the failure of a person, or the agent of a person, importing an article into Seychelles to comply with any condition subject to which the exemption was granted.

(3) In this section, "trades tax" means a duty, levy or tax charged by or under any law on the importation of any article such as is referred to in subsection (1).

Allowable deduction in respect of certain assignments and sales

19.(1) Subject to subsections (2) and (3), the amount or value of any consideration in money or money's worth paid or given by a person in a tax year -

- (a) in respect of the assignment to the person of any interest in a petroleum agreement; or
- (b) in respect of the sale to the person of petroleum information,

shall be an allowable deduction of the person for the tax year.

(2) No deduction shall be allowed under subsection (1) unless -

- (a) the Controller is satisfied that the amount or value of the consideration in money or money's worth for the assignment or, as the case may be, the sale has been brought to account in a tax year as assessable income accruing to the assignor or the seller concerned and that -
 - (i) petroleum income tax has been paid by; or
 - (ii) no such tax is chargeable to,
 the assignor or the seller in respect of that tax year;
- (b) the Controller is satisfied that the amount is not assessable income accruing to the assignor or, as the case may be, the seller concerned; or
- (c) the Controller is satisfied that adequate provision has been made for the payment of any petroleum income tax chargeable in respect of that amount.

(3) This section is subject to section 21 in any case in which that section applies in relation to an assignment or, as the case may be, a sale.

20.(1) Where the Controller has determined under Division 2 that an allowable loss has accrued to a person in a tax year then, subject to subsection (2), the assessable income accruing to the person in any succeeding tax year shall be treated as reduced by the amount of that allowable loss, or by so much of that amount as cannot, under this subsection, be relieved against the assessable income accruing in any earlier tax year.

Allowable deduction in respect of allowable loss

(2) Where an allowable loss has accrued to a person and the person ceases to be an assessable person for two consecutive tax years, the allowable loss that had so accrued shall not be relieved under subsection (1) against any assessable income accruing to the person in any tax year subsequent to the last of those two tax years.

Division 5 - Special provisions in relation to assignments and sales

21.(1) This section applies in relation to the assignment of an interest in a petroleum agreement or the sale of petroleum information where the parties to the assignment or, as the case may be, the sale make application in writing to the Controller requesting that it shall so apply and the Controller accedes to the request.

Assignment and sales between related companies

(2) Where this section applies in relation to an assignment or a sale -

- (a) the amount or value of the consideration in money or money's worth received in respect of the assignment or the sale shall not be assessable income for the purposes of section 8 (1) (a) or, as the case may be, section 8 (1) (b), or income of the assignor or seller for the purposes of any law relating to the taxation of income or profits; and
- (b) the amount or value of the consideration in

money or money's worth paid or given in respect of the assignment or the sale shall not be an allowable deduction for the purposes of section 19 (1), or an expense or outgoing of the assignee or purchaser for the purposes of any such law.

Effects on
Section 19 of
Controller
acceding to
request under
section 21

22. Where -

- (a) the Controller accedes to a request made under section 21 (1) by the parties to an assignment; and
- (b) an allowable loss has, when the Controller so accedes, been determined in relation to the assignor for any particular tax year and that allowable loss has not then been claimed by the assignor as an allowable deduction in any return delivered by the assignor pursuant to Part IV,

section 19 shall, after the Controller so accedes, apply as if that loss had been determined in relation to the assignee for that particular tax year and not in relation to the assignor.

Limitation on
Controller's
power to accede
to request under
section 21

Cap 40

23.(1) The Controller shall not accede to a request made under section 21 (1) unless he/she is satisfied that the parties making the request are related to each other as holding company and subsidiary; and for the purpose of determining whether or not there is such a relationship the Companies Act shall apply.

(2) For the purpose of satisfying himself/herself as required by subsection (1), the Controller may require the parties making an application to supply him/her with such documents and information as he/she thinks necessary for that purpose.

PART III - PETROLEUM ADDITIONAL PROFITS TAX

Petroleum
additional profits
tax to be imposed
by Petroleum
Agreement

24. A tax, to be called petroleum additional profits tax, shall be charged where the relevant petroleum agreement provides for the charging of such tax.

Charges to
petroleum
additional profits
tax and rates of tax

25. The petroleum additional profits tax shall be charged in

the circumstances stated in and in accordance with the provisions of the relevant petroleum agreement, and at the rate or rates specified in, or determined in accordance with, that agreement.

26.(1) Where, for any tax year, there is only one party to the relevant petroleum agreement, that party shall be liable to pay any petroleum additional profits tax payable in respect of that tax year.

Liability for
payment of
petroleum
additional profits
tax

(2) Where, for the whole or any part of any tax year, more than one person is a party to the relevant petroleum agreement, those persons are jointly and severally liable to pay any petroleum additional profits tax payable in respect of that tax year; but without prejudice to any claim, or the enforcement of any claim, which any such person incurring any such liability may have against another person in respect of that liability.

PART IV - ASSESSMENT TO TAX AND DETERMINATION OF LOSS

27. Every assessable person in respect of a tax year shall prepare a return, in such form as the Controller may approve, relating to petroleum income tax, within 6 months after the end of the tax year and deliver such return to the Controller within that period.

Return in relation
to petroleum
income tax by
assessable
persons

28. Where, in respect of a tax year, one, or more than one, person is a party to a relevant petroleum agreement that provides for the levying of petroleum additional profits tax, that person or, as the case may be, those persons, shall within 6 months after the end of that tax year, prepare and deliver to the Controller a return, in such form as the Controller may approve, relating to petroleum additional profits tax.

Return in relation
to petroleum
additional profits
tax

29.(1) A return under section 27 or 28 shall furnish information with respect to the matters specified in -

Contents of
return

- (a) Schedule 1, in the case of a return relating to petroleum income tax; and
- (b) Schedule 2, in the case of a return relating to

petroleum additional profits tax,

and shall include a declaration that the return is correct and complete.

(2) Any amount referred to in a return relating to petroleum income tax shall be expressed in Seychelles Rupees and, where the amount expressed in Seychelles Rupees has been converted, pursuant to subsection (3) from another currency, the amount in that other currency shall also be referred to in the return.

(3) For the purposes of subsection (2), where -

- (a) assessable income accrues to a person; or
- (b) a person incurs expenditure,

in a currency other than Seychelles Rupees, the provisions of the petroleum agreement, to which that person is a party, relating to currency conversion shall have effect for the purpose of converting the currency into Seychelles Rupees or, if there is no such provision in that agreement, or the person is not a party to any such agreement, the conversion shall be made in accordance with such procedure as the Controller may direct either generally or in any particular case.

(4) Any amount referred to in a return relating to petroleum additional profits tax shall be expressed in United States dollars and, where the amount expressed in United States dollars has been converted, pursuant to the relevant petroleum agreement in relation to the petroleum field concerned, from another currency, the amount in that other currency shall also be referred to in the return.

Failure to deliver
a return

30.(1) Where -

- (a) an assessable person fails to deliver a return as required by section 27; or
- (b) a return is not delivered as required by section 28,

the assessable person or, as the case may be, each person required by section 28 to prepare and deliver the return shall,

subject to subsection (3), be liable -

- (i) to a penalty not exceeding, except in the case mentioned in subsection (2), R50,000; and
- (ii) if the failure continues after it has been declared by the Court before which proceedings for the penalty have been commenced, to a further penalty not exceeding R5,000 for each day on which the failure so continues.

(2) If the failure continues after the end of 6 months from the time by which the return ought to have been delivered, the penalty under subsection (1) (i) shall be an amount not exceeding the aggregate of R50,000 and a sum equal to the total amount of the tax with which the person is charged or, where subsection (1) (ii) applies, an amount not exceeding the aggregate of R50,000 and a sum equal to the total amount of the tax with which the person or persons are charged, for the tax year concerned.

(3) Except in the case mentioned in subsection (2), a person shall not be liable to any penalty incurred under this section for failure to deliver a return if the failure is remedied before proceedings for the recovery of the penalty are commenced.

31.(1) Where any person fails to deliver any returns as required by section 27 or 28, or the Controller is not satisfied with a return so delivered, the Controller may require any such person, by notice served on the person, to do any of the following things, that is to say -

- (a) to deliver to the Controller copies of such accounts, including balance sheets, relating to the person's chargeable petroleum as may be specified or described in the notice within such period as may be so specified, including where the accounts have been audited, a copy of the auditor's certificate;

Production of
accounts, books
and other
information

- (b) to make available, within such time as may be specified in the notice, for inspection by a person authorised by the Controller, all such books, accounts and documents in the person's possession or power as may be specified or described in the notice, being books, accounts and documents which contain information about transactions relating to the person's chargeable petroleum.

(2) A person authorised by the Controller may make copies of, or take extracts from, any books, accounts or documents made available for his inspection under this section.

Incorrect return,
etc.

32.(1) Any person who -

- (a) delivers an incorrect return under section 27 or 28;
- (b) makes an incorrect statement or declaration in connection with any claim for the allowance of any expenditure or for any relief in respect of any tax charged by section 4 or 24; or
- (c) submits to the Controller any incorrect accounts in connection with the ascertainment of the person's liability in respect of any such tax,

is guilty of an offence and liable on conviction to a fine not exceeding R50,000, unless the person satisfies the Court before which proceedings on a prosecution are brought that the incorrect return, statement, declaration or accounts, was delivered or made, or were submitted, in good faith.

(2) Where any such return, statement, declaration or accounts as is or are referred to in subsection (1) were delivered, made or submitted by a person in good faith and it comes to the notice of the person that it was or they were incorrect, then, unless the error is remedied without unreasonable delay, the return, statement, declaration or accounts shall be treated as having been delivered, made or submitted otherwise than in good faith.

Assessment to
petroleum income
tax and
determination of
allowable loss, etc

33.(1) This section applies in relation to petroleum income tax,

hereinafter in this section referred to as "tax".

(2) Where it appears to the Controller that, in accordance with this Act, tax is payable by a person in respect of a tax year, the Controller shall make an assessment to tax on the person and shall serve notice of the assessment on the person.

(3) Where it appears to the Controller that, in accordance with this Act, an allowable loss has accrued to a person in a tax year, the Controller shall make a determination of that loss and shall serve notice of the determination on the person.

(4) Where it appears to the Controller that, in accordance with this Act, tax is not payable by a person in respect of, and an allowable loss has not accrued to the person in, a tax year, the Controller shall make a determination to that effect and shall serve notice of the determination on the person.

(5) A notice of assessment under this section shall indicate -

- (a) the tax year to which it relates;
- (b) the assessable income and allowable deductions taken into account in making the assessment;
- (c) the amount of the taxable income on which the tax has been assessed; and
- (d) the amount, expressed in Seychelles Rupees, of tax charged and the date on which the tax shall be due and payable in that currency.

(6) A notice of determination for the purposes of subsection (3) shall indicate -

- (a) the tax year to which it relates;
- (b) the assessable income and allowable deductions taken into account in making the determination; and
- (c) the amount of the allowable loss, expressed in Seychelles Rupees, determined.

(7) A notice of determination for the purposes of subsection (4) shall indicate-

- (a) the tax year to which it relates;
- (b) the assessable income and allowable deductions taken into account in making the determination; and
- (c) that no tax is payable and that no loss has accrued.

Assessment to petroleum additional profits tax, etc

34. (1) This section applies in relation to petroleum additional profits tax, hereinafter in this section referred to as "tax".

(2) Where it appears to the Controller that, in accordance with this Act, tax is payable for any tax year, the Controller shall make an assessment to tax on any person or persons liable under section 26 to pay the tax and shall serve notice of the assessment on the person or persons.

(3) Where it appears to the Controller that, in accordance with this Act, tax is not payable in respect of a tax year, the Controller shall make a determination to that effect and serve notice of the determination on any person who is a party to the relevant petroleum agreement.

(4) A notice of assessment under this section shall indicate -

- (a) the tax year to which it relates;
- (b) particulars of the computation of the tax and of amounts taken into account for that purpose; and
- (c) the amount, expressed in United States dollars, of tax charged and the date on which the tax shall be due and payable.

(5) A notice of determination for the purposes of subsection (3) shall indicate -

- (a) the tax year to which it relates;
- (b) particulars of the determination, and of amounts taken into account for that purpose; and

(c) that no tax is payable.

(6) Nothing in this section shall be construed as requiring the payment on more than one occasion of any tax charged.

35. (1) This section applies in relation to an assessment or a determination such as is referred to in section 33 or 34.

General provisions with respect to assessments

(2) A notice of assessment or determination shall state that the person on whom it is served may appeal against the assessment or determination in accordance with section 40.

(3) After the service of a notice of assessment or a notice of determination, the assessment or, as the case may be, the determination shall not be altered except in accordance with the express provisions of this part.

(4) The validity of an assessment or a determination shall not be affected by reason that any of the provisions of this Act have not been complied with.

(5) The Controller shall serve a notice of assessment or, as the case may be, of determination in respect of a tax year not later than 24 months after the end of the tax year.

36. (1) Where a person has under section 33 or 34 delivered to the Controller a return for a tax year and the Controller is satisfied that the information given in the return is correct in so far as it is material for the purpose of computing tax in respect of, or, where applicable, allowable loss accruing in, the tax year, the Controller shall, in so far as the computation falls to be made by reference to the matters dealt with in the return, make the assessment or determination under section 33 or, as the case may be, section 34, in accordance with the return.

Further provisions with respect to assessment and determinations

(2) Where the Controller is not so satisfied in relation to a return or a person fails to deliver to the Controller any return for a tax year as required by section 27 or 28, the Controller shall, in so far as the computation of the tax or, where applicable, the allowable loss, for the tax year falls to be made by reference to the matters which were dealt with in the return or, as the case may be, ought to have been dealt with in a return, make the assessment or determination under section 33 or, as the case

may be, section 34 to the best of his judgement.

(3) Nothing in subsection (1) shall be taken, in a case where a person has delivered a return as to which the Controller is not satisfied as mentioned in subsection (2), to prevent the Controller from basing his assessment or determination on the person having had an interest in chargeable petroleum different from that on which the person based his return.

Saving with
respect to
Section 10

37. Nothing in section 36 shall be construed, in a case to which section 10 applies, as preventing the Controller from giving effect to section 10.

Additional
assessments and
determinations

38.(1) Subject to subsection (3), where it appears to the Controller -

- (a) that the tax charged in an assessment such as is referred to in section 33 (2) or 34 (2) ought to be or to have been larger or smaller;
- (b) that the allowable loss determined in a determination such as is referred to in section 33 (3) ought to be or to have been larger or smaller;
- (c) that, where he made a determination such as is referred to in section 33 (4) in respect of tax year, he ought to have made an assessment to tax or a determination of allowable loss; or
- (d) that, where he made a determination such as is referred to in section 34 (3) in respect of a tax year, he ought to have made a different determination and, if appropriate, an assessment to tax in respect of that year,

the Controller may make such assessment or determination as may be necessary and, where he does so, he may make such assessments or determinations for that or any other tax year as may be necessary in consequence of the exercise of his power to do so.

(2) A notice of an assessment and a notice of determination made under this section on or in relation to a person shall be served on the person, or as the case may, any party to the relevant

petroleum agreement, and shall indicate, in the case of a notice of -

- (a) assessment pursuant to subsection (1)(a), the matters referred to in section 33 (5) or, as the case may be, 34 (4);
- (b) determination pursuant to subsection (1)(b), the matters referred to in section 33(6);
- (c) determination pursuant to subsection (1)(c), the matters referred to in section 33(7);
- (d) determination pursuant to subsection (1)(d), the matters referred to in section 34(5),

and shall contain a statement such as is referred to in section 35(2).

(2) The Controller shall not exercise any of the powers under subsection (1) in respect of a tax year after the expiry of 5 years from the end of the tax year except where any fraud or gross or wilful neglect has been committed by or on behalf of any person and the exercise of the power is necessary in consequence thereof; and in such a case assessments or determinations may be made under that subsection in respect of other tax years notwithstanding that that period, may have elapsed.

39.(1) A person entitled under this part to be served with a notice of assessment or determination may appeal to the Supreme Court against the assessment or determination by notice filed in the Supreme Court within 180 days after notice of the assessment or determination is served on the person.

Right of appeal

(2) The grounds on which a person relies shall be stated fully in the notice filed pursuant to subsection (1) or in a further notice filed in accordance with that subsection; and if not so stated the person shall be deemed not to have appealed.

(3) If, on an appeal, it appears to the Supreme Court -

- (a) that the tax charged in an assessment ought to

have been larger or smaller;

- (b) that the allowable loss determined in a determination ought to have been larger or smaller;
- (c) that where a determination was made that no tax was payable an assessment to tax ought to have been made;

the court shall -

- (i) amend accordingly the assessment or determination;
- (ii) substitute for the assessment any determination, or for the determination any assessment, which the Controller was empowered to make, but otherwise the assessment or, as the case may be, the determination shall stand good; and/or
- (iii) make such other orders as the court shall determine.

(4) Subject to any order made in the exercise of the supervisory jurisdiction of the Supreme Court or appeal therefrom, the Controller's decision on an appeal under this Act shall be final.

(5) The Chief Justice may make rules prescribing the practice and procedure with respect to appeals under this section.

(6) Where before the determination of an appeal, a person withdraws the appeal, section 40 shall apply as if no appeal had been made.

(7) Nothing in this section shall be construed as allowing more than one appeal to be made against an assessment or determination under section 34 or an assessment or determination under section 38, with respect to petroleum additional profits tax.

40.(1) Subject to this section, any tax assessed under this part shall be due and payable on the date specified in the notice of

assessment, not being less than 30 days after the service of the notice.

(2) When notice of appeal is lodged by a person under section 39 before the date on which tax assessed under this part becomes due and payable, only 50 per cent, or such greater percentage as the person or persons liable to pay the tax determines or determine, of the tax assessed is due and payable on the due date.

(3) Subject to this section, where as a result of an appeal under section 39 an amount of tax or an increased amount of tax becomes payable, that amount shall be due and payable not later than 30 days after the date of the decision on appeal.

(4) The Minister may in any case grant such extension of time for the payment of tax, or permit payment of tax to be made by such instalments and within such time as he considers the circumstances warrant, and in any such case the tax shall be due and payable accordingly.

(5) Where, as a result of an appeal under section 39, a person's liability to pay tax is reduced or removed, the Government shall refund any tax overpaid or, as the case may be, paid, to the person out of the Consolidated Fund which is, to the necessary extent, hereby charged accordingly.

(6) Subject to subsection (7), if any tax remains unpaid after the time when it becomes due and payable, interest shall be due and payable at the rate of 10 per cent per annum on the amount of tax unpaid, computed from time to time or, when an extension of time has been granted under subsection (3), from such date as the Controller determines, not being a date prior to the date on which the tax was due and payable.

(7) Where, in the circumstances referred to in subsection (2), a person pays a percentage of tax assessed and as a result of an appeal made under section 39 a further amount of tax becomes payable, interest at the rate of 10 per cent per annum is payable on that further amount from the date on which the tax was assessed was due and payable until the further amount is

paid.

(8) The Minister may remit the amount of any interest on tax where he considers that it is, in the circumstances, just and reasonable to do so.

(9) Subject to subsection (10), payment of petroleum additional profits tax, including any interest such as is referred to in subsection (6) or (7) and any refund of tax pursuant to subsection (5), shall be made in United States dollars.

(10) Nothing in this section shall operate to prevent the discharge of an obligation to pay any petroleum additional profits tax, or interest on any such tax, by the delivery of petroleum in any case where the Minister directs in writing under this subsection that payment shall be made in that manner; and in that event references in this section to payment of any such tax shall be construed accordingly, and the tax or, as the case may be, the interest shall be paid in that manner.

PART V - ADMINISTRATION AND MISCELLANEOUS

Management of the taxes

41. The taxes charged by sections 4 and 24 shall be under the care and management of the Controller.

Power of Minister to give directions to the Controller

42. The Minister may give to the Controller directions of a general character, not inconsistent with this Act, as to the exercise and performance of the functions of the Controller and the Controller shall give effect to any directions so given.

Performance of functions

43. Anything authorised or required by or under this Act to be done by the Controller may be done by an individual appointed to exercise and perform functions in the Seychelles Revenue Commission who is authorised either generally or specially in that behalf in writing by the Controller.

Certain material to be treated as confidential

44. (1) Subject to this section, every responsible person shall regard and deal with classified material as confidential.

(2) No classified material shall be produced or used in any court or otherwise except-

- (a) for the purposes of this Act or any law relating to

tax on income, profits tax or other similar tax;

- (b) in order to institute or assist in the course of a prosecution for any offence committed in relation to any tax charged by section 4 or 24 or in relation to any tax or duty imposed by another law relating to taxation; or

- (c) with the written authority of the Minister or of the person to whose affairs it relates.

(3) No official shall be required by any court-

- (a) to produce or disclose classified material which has been supplied to him or another official otherwise than by or on behalf of the person to whose affairs it relates; or

- (b) to identify the person who supplied that material.

(4) Nothing in this section shall prevent-

- (a) the production or disclosure of classified material to the Auditor-General or any public officer under his direction and control; and

- (b) the use of classified material by the Auditor-General; or

- (c) any such public officer, to the extent necessary to enable the Auditor-General or the public officer to properly exercise and perform the functions of his office.

(5) In this section-

"classified material" means -

- (a) any return made or document produced for the purposes of this Act; or

- (b) an information respecting the affairs of a person disclosed or obtained under the provisions of this Act not being information

which is generally available to members of the public;

"official" means the Controller and any person employed in carrying out the provisions of this Act;

"responsible person" means an official, and the Auditor-General and any public officer under his direction and control.

Disclosure of information

45.(1) Any person employed in the exercise or performance of any function under this Act who, by virtue of the exercise or performance of his functions, becomes possessed of any information and who directly or indirectly communicates the information to any person otherwise than -

- (a) in the normal exercise and performance of his functions under this Act;
- (b) in the course of any proceedings in a court; or
- (c) with the express permission of the Minister.

is guilty of an offence and liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding R50,000 or to both.

(2) It shall be a sufficient defence if a person charged with an offence under this section proves that the information communicated, to which the offence relates, was generally available to members of the public otherwise than by reason of that communication.

Obstruction of officials

46. A person who hinders or obstructs any officials in the lawful exercise or performance by that official of any function under this Act is guilty of an offence and liable on conviction to a fine not exceeding R50,000.

Recovery of tax

47.(1) Any tax charged under section 4 or 24 which is due and payable may be sued for and recovered in a court of competent jurisdiction by the Attorney-General suing on behalf of the Government.

(2) In any proceedings under this section -

- (a) a certificate purporting to be signed by the Controller certifying the amount of tax due shall be regarded as evidence of that fact; and
- (b) the court before which the proceedings are taken shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed or the subject of an appeal.

(3) The reference to tax in this section includes additional tax and interest on tax.

48.(1) Every person who is a party to a petroleum agreement or to whom assessable income accrues shall at all times be represented by a representative of the person resident in Seychelles; the person shall, from time to time, make any appointment necessary to ensure compliance with this section and shall forthwith notify the fact of an appointment, the name of the person appointed and his address in Seychelles for service, to the Controller.

Representatives

(2) Service on the representative of a person shall constitute service on the person, but without prejudice to the right to effect service on the person in any other way.

(3) Anything done, including proceedings taken, by the representative of a person in his representative capacity shall be deemed to have been done or taken by the person.

(4) Any person required to so do who fails to comply with subsection (1) is guilty of an offence and is liable on conviction to a fine of R5000 during each day on which the offence continues.

49. No tax shall be charged under any law relating to tax on income, profits tax or other similar tax in respect of any assessable income or dividend paid out of profits which are subject to petroleum income tax.

Restriction on law relating to income tax, etc.

50. If the President, by order, declares that any arrangements, specified in the order, have been made with the

Special arrangements for relief from double taxation

Government of any territory outside Seychelles with a view to affording relief from double taxation in relation to any tax charged by this Act and any tax of a similar nature 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 this Act or any other law to the contrary, as if those arrangements were contained in this Act.

Regulations

51.(1) The Minister may make regulations prescribing all matters which are required or permitted to be prescribed by this Act or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations may be made under subsection (1) amending any of the Schedules.

Repeal

52. The Petroleum Income Tax Decree is repealed.

Savings.

53. A return delivered, or assessment or determination made, in respect of a tax year, under or for the purposes of the Petroleum Income Tax Decree before the commencement of this Act shall be deemed to have been made under or for the purposes of this Act.

SCHEDULE 1 *(Section 29 (1) (a))*

RETURNS FOR PETROLEUM INCOME TAX

A return for petroleum income tax by a person in respect of a tax year shall furnish information with respect to the following matters, that is to say-

- (a) the quantity of the person's chargeable petroleum won and saved in the tax year;
- (b) the quantity of that petroleum disposed of by sale before the end of the tax year and, in respect of each delivery -
 - (i) the quantity of petroleum delivered;
 - (ii) the person or persons to whom the petroleum was disposed of;

- (iii) in the case of petroleum disposed of in a sale at arm's length, the price received or receivable for the petroleum; and
- (iv) in the case of petroleum disposed of in a sale not at arm's length, the price received or receivable and the market value of the petroleum;
- (c) the quantity of the petroleum won and saved in the tax year appropriated in the tax year to refining or other processing without being disposed of and, in respect of each appropriation -
 - (i) the quantity of petroleum appropriated; and
 - (ii) the market value of the petroleum;
- (d) in the case of petroleum won and saved in the tax year which the person had at the end of the tax year either not disposed of and not appropriated to refining or other processing, or disposed of but not delivered, and which had not been lost or destroyed in the tax year -
 - (i) the quantity of the petroleum; and
 - (ii) the amount represented by one-half of the market value of the petroleum;
- (e) in the case of petroleum won and saved in the tax year that is lost or destroyed in the tax year, the quantity lost or destroyed in the tax year and the amount received or receivable under a policy of insurance or otherwise in respect of the petroleum;
- (f) in the case of an assignment in the tax year of any interest of the person under a petroleum agreement, the amount or value of any consideration received or receivable by the person in the tax year in respect of the assignment and the name of the assignee;
- (g) in the case of the sale in the tax year of petroleum information, the amount or value of any consideration

- received or receivable by the person in respect of the sale and the name of the purchaser;
- (h) in the case of any assessable income such as is referred to in paragraph (c), (d), (e) or (f) of section 8(1) received by the person in the tax year, the amount of such income with particulars of each such amount of assessable income;
 - (i) the amount of each class of allowable deductions and particulars of that amount;
 - (j) the amount of all the allowable deductions claimed by the person for the tax year;
 - (k) in the case of an allowable deduction under section 14(1)(e), the name of the person from whom the money or credit concerned was borrowed or obtained and the terms on which the money or credit was covered or obtained;
 - (l) in the case of an allowable deduction under section 21, the name of the assignor or, as the case may be, the seller concerned;
 - (m) the amount (if any) of the taxable income or the allowable loss of the person for the tax year, and particulars of the calculation;
 - (n) any other matter which is, under the relevant petroleum agreement, required to be included in the return; and
 - (o) the amount (if any) of the tax payable for the tax year.

SCHEDULE 2 *(Section 29 (1) (b))*

RETURNS FOR PETROLEUM ADDITIONAL PROFITS TAX

A return for petroleum additional profits tax in respect of a tax year shall furnish information with respect to the following

matters, that is to say -

- (a) the matters which are, under the relevant petroleum agreement, required to be included in the return; and
- (b) the amount (if any) of the tax payable for the tax year.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on the 21st of October, 2008.



Marie-Nella Azemia
Clerk of the National Assembly