

LEGAL FRAMEWORK FOR PETROLEUM ADMINISTRATION AND TAXATION IN NIGERIA: A LEGAL APPRAISAL OF CONFLICTING LEGISLATIONS\*

**Abstract**

The Revenue from crude oil activities in the upstream sector are ordinarily taxed under Petroleum Profits Tax (PPTA) but for the enactment of the Petroleum Industry Act (PIA) which has now incorporated the use of Companies Income Tax Act in taxing petroleum operations. Petroleum Profit Tax accounts for the major revenue earning for the Federal Government of Nigeria, this makes it imperative for an effective administration and control of the sector by the federal government. Recently a new regime for the petroleum administration, Petroleum Industry Act, 2021, was introduced with an amendment of the Petroleum Act, 2004. The new Act introduced host communities Development Trust Fund, Petroleum Fiscal Industry Framework, Hydrocarbon tax and others. Most importantly, while amending Petroleum Act and incorporating some of the changes in taxation of the sector, they failed to realize the need to amend the legislation for the taxation of the industry which is the Petroleum Profit Tax Act. It does appear that the Act while trying to address old problems ended up creating new ones. Doctrinal method of data collection was used and analytical approach adopted in examining the research materials including statutes, judicial decisions, text books, journal articles and internet materials. It revealed that the language of the Act is ambiguous and imprecise. It did not define the frontier basin to be distinct from host communities. Fundamentally, the amendment made Petroleum Industry Act estranged from the people and stakeholders in the oil and gas industry in Nigeria. There is need for further amendment of the petroleum Industry Act to bring it in conformity with the other tax legislations: the Petroleum Profit Tax Act and the Constitution.

**Keywords:** Tax, Petroleum, upstream, midstream, downstream, hydrocarbon tax

**1. Introduction**

Crude oil was discovered in commercial quantity in Nigeria at Oloibiri in the present Bayelsa State in the Niger-Delta of Nigerian in 1956.<sup>1</sup> But the history of oil production in Nigeria dates back to 1908 when an affiliate of a German Exploration company, the Nigerian Bitumen company, came to the present day Ondo state to venture for bitumen (tarsand).<sup>2</sup> At this discovery, the oil exploration in Nigeria had to function within the ambit of the legal and policy framework that existed. There were a number of pre-independence laws<sup>3</sup> regulating the oil exploration and production in Nigeria; however, the most significant post independence law is the Petroleum Act 1969.<sup>4</sup> The Petroleum Act repealed the existing legislation on oil and gas exploration and production in Nigeria. The Act with other legislations like the Petroleum (drilling and Production Regulations) and other regulations made there under laid down the foundation of legal framework for the operations in the oil industry Nigeria until the National Assembly enacted Petroleum Industry Act, 2021. Nigeria earns about 80 percent of her gross domestic capital from the sale of petroleum products and different forms of petroleum taxes introduced by the government.<sup>5</sup> Apart from other laws regulating the commercial practices in the upstream sector of the oil and gas industry, the primary legislation to collect taxes upon profits made from the winning of petroleum is the Petroleum Profit Tax Act (PPTA).<sup>6</sup> This chapter discussed the introduction of Hydrocarbon Tax with conflicting provisions from the aforementioned PPTA legislation with regards to tax revenue administration and collection in Nigeria.

**2. Conceptual clarifications**

**Tax**

Taxation spans over a gamut of human activity and is essentially aimed at providing the requisite revenue for the socio-economic development of a nation. Taxation<sup>7</sup> is the composition or assessment of tax. It is the means by which the state obtains the revenue required for its activities. Tax is a pecuniary burden laid upon individuals or persons or property to support the government which is exacted by a legislative authority.<sup>8</sup> It is a compulsory monetary charge imposed by the government on persons, entities, transactions or property to yield public revenue<sup>9</sup>. In *Mathews v Chicory Marketing Board*<sup>10</sup> it is a compulsory exaction of money by a public authority for public purposes or the raising of money for the purpose of government by means of contribution from individual persons. It is a demand made by Government of a country for a compulsory payment of money by the citizens of the country.<sup>11</sup> Whenever issues come up requiring a determination of whether a person either natural or artificial is liable to pay taxes, the court is duty bound to explore the relevant tax legislations and apply them accordingly.<sup>12</sup> It

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<sup>1</sup> MC Ogwezzzy. Definition, History and Sources of Nigerian Oil and Gas law on Oil and gas Exploration and Production in Nigeria, MC Ogwezzzy (Edited) (Ikeja; Princeton & Associates Publishing Co. Ltd, 2020) 17

<sup>2</sup> F Olanrewaju; The laws of oil pollution and Environmental Restoration: A comparative Review (Nigeria: Olade publishers: 2010) 153

<sup>3</sup> The petroleum Ordinance 1889, Mineral Regulation (oil) Ordinance, 1907, Land and Native Rights proclamation of 19010, the Mineral Oils Ordinance of 194, the Mineral Ordinance 1946, mineral oil Amendment Act, 1950 and Oil Amendment Ordinance, 1958

<sup>4</sup> Petroleum Act 1969, cap10 LFN 2004, now repealed by Petroleum Industry Act, 2021.

<sup>5</sup> Petroleum Industry Act (PIA), 2021, Chapter 4, parts I, II, III, IV, V, Vi, SS258-276

<sup>6</sup> Cap p13. LFN 2004

<sup>7</sup> B A Garner (ed) *Black's Law Dictionary*, 10<sup>th</sup> ed; (USA, Thomson Reuters St Paul MN, 2014) 1688

<sup>8</sup> I A Ayua, *Nigerian Tax Law* (Ibadan: Spectrum Law publishing, 1996) 9

<sup>9</sup> BA Garner (ed) *Black's Law Dictionary*, op.cit.

<sup>10</sup> (1938) 60 CLR 263 at 276

<sup>11</sup> CS Ola, *Nigerian Income Tax law and Practice* (Ibadan, MacMillian Pub, 1983)13.

<sup>12</sup> *Best Children Int'l Schools v FIRS* (2019) 40 TLRN 33

is certain and well settled in our jurisprudence that taxation issues are not on all comers' affairs or an arbitrary issue. No tax can be imposed on the subject without the word in an act of parliament clearly showing an intention to lay a burden on the subjects.<sup>13</sup> Agbonika<sup>14</sup> stated that for there to be command for the payment of tax, the following features or characteristics must be visible;

- i. It must be compulsory levy
- ii. There must be a legislation backing the demand for such payment.
- iii. The levy must be certain and show a basis for calculating the payment.
- iv. Payment must be for a public authority with tax jurisdiction known as the Relevant Tax Authority.
- v. Payment must be for the common good of all and not for any individual use.
- vi. There must be penalties for non-compliance with the law
- vii. Payment could be in money or money's worth such as goods or free labour.

### **Petroleum**

Petroleum means hydrocarbons and associated substance as exist in its natural state in strata and includes crude and includes crude oil, natural gas, condensate and mixture of any of them but does not include bitumen and coal.<sup>15</sup> Crude oil<sup>16</sup> is the petroleum which is in liquid conditions upon production from a reservoir either in its natural state or after the extraction of water, sand or other foreign substances from it, but before any such oil has been refined or otherwise treated, other than foreign substances from it, but before any such oil has been refined or otherwise treated, other than oil extracted by destructive distillation from coal, bituminous shale's or other stratified deposits. On the other hand petroleum products mean materials derived from crude oil and natural gas processing such as ethane, propane, butanes, pentanes, liquefied petroleum gas, natural, gas liquids, asphalts, gasoline, diesel, gas oil, jet fuel, transportation fuels, fuel oils for heating and electricity generation and such other derivatives.

### **Hydrocarbon Tax**

The hydrocarbon tax applies to crude oil, field condensates and associated natural gas liquids and is subject to different licence charges which is 30% on converted PMLs and PPLs.<sup>17</sup> The expenses must be wholly, reasonably, exclusively and necessarily incurred to be tax-deductible. However, a cost price ratio limit of 65% of gross revenue is imposed for hydrocarbon tax deduction purposes, any excess cost incurred may be carried forward.<sup>18</sup>

### **Host Communities Development Trust Fund**

The operators in the sector are mandated to incorporate host communities' development trust for the benefit of the communities for which the settlor is responsible.<sup>19</sup> The Act by this societal change mandates that a company which secures an oil prospecting licence or mining lease or an operating company on behalf of joint venture to contribute a portion of its expenses to the host community's development trust fund. The objective is to foster sustainable prosperity within host communities and for socio-economic benefits and harmonious co-existence. It provides that 75% of available cash will be used for capital projects, 20% for reserves and 5% for administrative expense.<sup>20</sup>

## **3. Ownership and Control of Petroleum**

Nigeria has exclusive rights to all mineral resources reposed under its territory including mineral oil.<sup>21</sup> The property and ownership of petroleum within Nigeria and its territorial water, continental shelf and exclusive economic zone is vested in the Government of the Federation of Nigeria.<sup>22</sup> The federal Government of Nigeria therefore grants licences such as petroleum exploration licence to qualified applicants to carryout petroleum operations and petroleum prospecting licence to drill exploration and appraisal of wells and do corresponding test production on a non-exclusives basis.<sup>23</sup> In *Attorney General of the Federation v Attorney-General Abia State*,<sup>24</sup> the issue before the Supreme Court was for the determination of the seaward boundary of a littoral states within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the federation account directly from any natural resources derived from the state pursuant to section 162(2) of the constitution of the Federal Republic of Nigeria 1999. The apex court held inter alia that none of the littoral states is sovereign despite the historical narration by some of them. The states are part and parcel of the sovereign independent Nigeria. The implication is that none of them can exercise any control claim that revenue accruing from mineral resources offshore belong to any of them. In line with the statutory and judiciary authorities, no state government, local government or any group of

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<sup>13</sup> *A Authority v Regional Tax Board* (1970) All NLR 177, *Scottish Widows Plc & ors v Commissioner for her Majesty Revenue and Customs (SCOTLAND) ors* (2011) LPELR-17822 (UK) and *VODACOM BUSINESS Nig Ltd v FIRS* (2018) 35 TLRN 01 at 18.

<sup>14</sup> JAM Agbonika & JAA Agbonika, *Understanding of ABC of Taxation the Nigerian Perspective in JA M Agbonika et al (ed) Tropical Issues on Nigerian Tax Laws and related Areas*, Vol 2. Ababa Press Ltd, (2018) p2.

<sup>15</sup> PIA, 2021, chapter 5, section 318

<sup>16</sup> Ibid

<sup>17</sup> PIA, Chapter 3, s 260.

<sup>18</sup> Ibid, s. 263.

<sup>19</sup> Ibid, s. 235.

<sup>20</sup> Ibid, s. 244

<sup>21</sup> Constitution of the Federal Republics of Nigeria (CFRN) 1991 as amended, second schedule part 1, Exclusive Legislative ;list, item 39

<sup>22</sup> PIA, 2021, Chapter 1, parts 1, s.1

<sup>23</sup> Ibid, Chapter2, part 11, s.70 (i) (a-b)

<sup>24</sup> (No 2) (2))2 FWLR (pt. 102)1

persons other than federal Government can exercise any sovereign right, claim, control or ownership over oil and gas resources within, upon or underlying all lands, sea bed and sub-oil including lands under the territorial waters of Nigeria or that forms part of the continental shelf or exclusive Economic zone of Nigeria.<sup>25</sup>

#### **4. Licences Granted by the Federal Government**

The petroleum Industry Act<sup>26</sup> provides for three (3) classes of oil licenses and leases that could be granted by the commission<sup>27</sup> to an applicant. In *Nwadioro & 2 ors v Shell Petroleum Development Company of Nigeria Ltd*,<sup>28</sup> the court held that under then Petroleum Decree No 51 it empowers the minister or government to grant the licence. The Act<sup>29</sup> provides that there shall be the following licences and lease under the Act related to upstream petroleum operations: -

- (a) Petroleum exploration licence, which may be granted to qualified applicants to carry out petroleum exploration operations on a non- exclusive basis;
- (b) Petroleum prospective licence, which may be granted to qualified applicants to:
  - (i) Drill exploration and appraisal wells and do corresponding test production on an exclusive basis, and
  - (ii) Carry out petroleum exploration operations on a non-exclusive basis and
- (c) Petroleum mining lease, which may be granted applicants to:
  - (i) Win, work, carry-away and dispose of crude oil, condensates and natural gas on an exclusive basis.
  - (ii) Drill exploration and appraisal wells and carryout the related test production on an exclusive basis and
  - (iii) Carryout petroleum exploration operations on a non-exclusive basis

Note that the Act<sup>30</sup> provides that a licence or lease may only be granted to a company incorporated and validly existing in Nigeria under the companies and Allied Matters Act.

#### **Petroleum Exploration Licence (PEL)<sup>31</sup>**

A petroleum Exploration Licence is granted to a company to explore for petroleum on a non-exclusive basis of the right to carryout exploration operations. The licence shall be for three years and may be renewable for additional period of three years subject to fulfillment of prescribed conditions.<sup>32</sup>

#### **Petroleum Prospecting License (PPL)<sup>33</sup>**

The holder of a petroleum prospecting license shall, subject to the fulfillment of obligations imposed by the Act shall have exclusive right to drill explorations and appraisal well within the area provided for in the licence. The holder may carry away and dispose of petroleum won during prospecting operations subject to the fulfillment of obligations imposed upon him by or under this Act.

#### **Petroleum Mining Lease (PML)<sup>34</sup>**

This is granted only to the holder of an oil prospecting licence who has satisfied all the conditions imposed on the license or otherwise imposed on him for instance a daily production of not less than 10, 000 barrels.

#### **5. Establishment of incorporated Joint Venture**

i) The Nigerian National Petroleum Company Limited (NNPC Ltd)<sup>35</sup> and other parties to joint operating agreements in respect of upstream petroleum operations, may on a voluntary basis restructure their joint operating agreement as joint venture carried out by way of a limited liability company (IJVC) with a view to, among other things<sup>36</sup> (a) agreeing and executing a shareholder's agreement in respect of the applicable IJVC (b) agreeing to the provisions of the memorandum and articles of association of the applicable IJVC. Following the incorporation of an IJVC; (a) It can carry out upstream, midstream and downstream petroleum operations subject to the appropriate fiscal regime as specified in this Act, provided, however, that where the parties wish to enter into more than none stream of operations, the parties shall incorporate separate companies under the Act (b) It shall be deemed to be the sole licence or lessee (as applicable) of each petroleum prospecting licence or

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<sup>25</sup> Exclusive Economic zone is defined in Article 53 of the United Nation as Conventions on the law of the sea, 1982 as an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this part, under which the right and jurisdiction of the coastal state and the rights and freedom of other states are governed by relevant provisions of the convention. The zone shall not extend beyond 200 nautical miles from the baselines from which the breath of the territorial's seas is measured.

<sup>26</sup> PIA, 2021, Ibid, s.70

<sup>27</sup> Ibid, 2.318, Commission means the Nigerian upstream Petroleum Regulatory Commission established under the Act

<sup>28</sup> NOGC 1 (1961-1995)205

<sup>29</sup> PIA, 2021, Ibid, s.70 (I) (a-c)

<sup>30</sup> Ibid, S.70 (2).. However, this is subject to the overriding power of the Minister of Petroleum in Section 3 (1) (g-h). Note however, that the implication of the use of may is that where a non-Nigeria company meets up with the terms and conditions it could be granted

<sup>31</sup> Ibid, s 71 (1)

<sup>32</sup> Ibid, S 71 930

<sup>33</sup> Ibid, S 72 (1)

<sup>34</sup> Ibid, S. 81 (1)

<sup>35</sup> Ibid, S. 65 (i) The Proposed IJVC Structure shall be an independent entity, having a strong commercial orientation and transportation company operation for the IJVC shareholders with clear rules for accountability.

<sup>36</sup> PIA, 2021, second schedule, paragraph 1,2,3, & 4

petroleum mining lease held jointly under the applicable existing joint operating agreement immediately prior to its incorporation.

### **Production sharing contract**

Production sharing contract is any agreement for the exploration, development and production of petroleum on terms under which the financial risk-bearing party shall recover costs and receives a share of the profits based on a share of production as established in the contract from the applicable area. NNPC Limited is vested with the concessionaire of all Production Sharing Contracts (PCS), profit sharing and risk service contracts as the national oil company on behalf of the federation in line with its competencies.<sup>37</sup> Under this arrangement, NNPC limited remains the owner of the mineral right (concession) and enters into a contract with a foreign technical partners designated contractors as held *Esso Exploration and Production Nigeria Ltd & nor v FIRS*.<sup>38</sup> The contractor bears all the risks and when oil is discovered in commercial quantity, they recover their cost and share profit on a predetermined ratio with NNPC. The royalty payable under this arrangement is as follows;

201	-	500meters water depth	.	.	.12%
501	-	800 meters depth	.	.	.8%
801	-	1000 meters depth	.	.	.4%
Beyond 1000 meters water depth	.	.	.	.	0%
At the inland basin water depth	.	.	.	.	.10%

## **6. Petroleum Profit Tax**

The Petroleum Profit Tax Act<sup>39</sup> provides a legal framework for the understanding of the Nigeria Petroleum tax regime. It is only the profit of the upstream activities, that is, operations involved in all the activities carried out in the oil exploration, drilling, extraction, development, production, transportation and sale of crude oil that is chargeable to tax.<sup>40</sup> The profit of the other two categories of companies involved in the industry, that is, the downstream and midstream sectors are charged under the Companies Income Tax Act, 2007.

Apart from the Petroleum Profit Tax Act, there are other various contractual agreements, memorandum of understanding and others that provide information on the incentives made available by the federal government to the operators in the oil and gas sector. These include:

- a. Associated Gas Fiscal Arrangement (AGFA) 1992 which was later reviewed in 1997, 1998 and 1999,
- b. Production Sharing Contract (PSC) of 1993. This deals with the exploration and production in deep offshore territorial waters in Nigeria.
- c. Memorandum of understanding (MUO) of 2000.

Noteworthy, is the introduction of Hydrocarbon Tax<sup>41</sup> in the Petroleum Industry Act, 2021 which is applicable and levied upon the profits of companies engaged in the upstream Petroleum operations in the onshore, shallow water and deep offshore, payable during each accounting period.

### **6.1 Administration of Petroleum Profit Tax**

Taxation of Petroleum Profit which started since 1959 and the enactment has further been amended and the objectives of which as stated in the preamble is to impose a tax upon profits from winning of petroleum in Nigeria, to provide for the assessment and collection thereof and for purposes connected therewith.

The Board<sup>42</sup> was established in the Act,<sup>43</sup> The Federal Inland Revenue Service (FIRS) is vested with the power to administer, manage, charging and collection of petroleum profit tax. The Federal Inland Revenue Service is statutorily responsible for the assessment and collection of taxes in the oil and gas sector of the economy. The powers and duties of the service are spelt out subject to other provisions of the Act,<sup>44</sup> thus;

- i. The due administration of the Act, the care and management of the tax.
- ii. Power to acquire, hold and dispose property taken as security for or in satisfaction of any tax or any judgment debt due in respect of any tax
- iii. May sue and be sued in its official name and subject to any express provisions under any subsidiary legislation or otherwise, the Board may authorize any person to accept service of any document to be sent, served upon or delivered to the Board.
- iv. The service may by notice in the Federal Gazette call for any information, return or documents required to be supplied to such other person whether within or outside Nigeria.

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<sup>37</sup> Ibid, S. 64 (b)

<sup>38</sup> (2012) 8 TLRN 45

<sup>39</sup> (PPTA) cap p13 LFN 2004

<sup>40</sup> PPT, LFN 2004, s.8

<sup>41</sup> PIA, 2021, s.260, however, subject to section 262 of the Act, the crude oil revenue of the company shall be the value of any chargeable oil adjusted to the measuring points based on the proceeds of the chargeable oil sold by the company and the value of all chargeable oil disposed of by the company.

<sup>42</sup> Formerly., Federal Board of Inland Revenue of Inland Revenue (FBIR) but now; Federal Inland Revenue Service (FIRS) see, section 259 of the Petroleum Industry Act 2021 and section 1 of the Federal Inland Revenue Service (Establishment) Act, 2007

<sup>43</sup> PPTA Act, LFN 2004, s.3, however see the provisions of section 259 of the PIA, 2021.

<sup>44</sup> Ibid, S.3 (1) (a-1) Again, PIA, 2021, S.259 provides that the functions of the service shall include assessment and collection of hydrocarbon tax and enforcement of the provisions of the Act, companies Income tax and tertiary education fund as it relates of petroleum operations.

- v. By notice in the Federal gazette or in writing authorize any person within or outside Nigeria to perform certain functions on behalf of the service.<sup>45</sup>
- vi. The powers and duties assigned to the service are however subject to the authority, direction and control of the minister. The proviso is that he shall not give any directive, order or instruction to the service 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.
- vii. Receive every claim, objection, appeal, representation or the like made by any person under any provision of the Act or any subsidiary legislation made there under, shall be made in accordance with such Act and legislation and

By virtue of the Act,<sup>46</sup> an act required to be done by the service in relation to its powers and duties may be signified under the hand of the chairman of the Board or any officer of the service authorized by the service. There is an imposition of an Oath of secrecy on any person involved in the administration of the Act.<sup>47</sup> But this duty of secrecy may be waived with an authorization of the minister or for the purpose of the Act or other law relating to income in force in Nigeria. Note that subsection 3 further excludes any such document or information from being tendered or communicated in court in any proceedings other than for the purpose of carrying out the provisions of the Act or to institute prosecution. The power to make rules generally for the carrying out of the provisions of the Act is vested in the minister while the service is empowered to specify the form of returns, claims, statements and notices to be used under the Act.<sup>48</sup> Service of notice is to be effected at the registered office of the company to be served in the case of companies registered in Nigeria and on the individual authorized to accept service in the address filed with the Registrar-General (now the Corporate Affairs Commission)<sup>49</sup> or the registered office of the company wherever it may be in the case of a company registered outside Nigeria.

### **7. Charge to tax**

Taxation of petroleum profits is levied under the Act<sup>50</sup> as follows;

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. Note the tax is levied on the profits of a company engaged in petroleum operations as opposed to individuals who are not permitted to go into petroleum operations.<sup>51</sup>

Petroleum operations pursuant to the Act 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 any 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 disposal of chargeable oil by or on behalf of the company.

But in *Shell v FBIR*,<sup>52</sup> the Supreme Court wrongly gave the meaning of petroleum operations to include operations incidental to the carrying out of petroleum operations thus;

A close examination of the definition of the words petroleum operations in section 2 would show that the specific words therein are not limited to drilling, mining, extracting or other like operations but include in addition the phrase or process, not including refining at a refinery, in the course of a business carried on by a company engaged in such operations. In my view there is no distinct genus in the definition for the phrase and all operations incidental thereto to allow the rule of *ejusdem generis* to apply. In the above, the Supreme Court left the restrictive definition of the word petroleum by the Act and expanded the meaning of the word to include the activities of companies not chargeable under the Act. The definition activates activities such as refining of crude oil, marketing, solid minerals, solid field services and others to be subject to petroleum profit tax. The decision is contrary to the position of law as the court failed to make a distinction between the activities subject to companies' income tax Act and Petroleum Profit Tax.

### **8. Ascertainment of profits, Adjusted profits, Assessable Profits and Chargeable Profits**

The profit of a period of a company shall be taken to be the aggregate of<sup>53</sup>:

- (i) the proceeds of sale of all chargeable oil sold by the company in that period.

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<sup>45</sup> Any claim against the action of the service shall not be on the ground that it is contrary to the direction, order or instruction given by the minister

<sup>46</sup> PPTA, 2014, s.4 (1-4)

<sup>47</sup> Ibid, s.5. The secrecy affects dealing with documents, information, returns, assessment lists and copies of such lists relation to income and chargeable profits.

<sup>48</sup> Ibid, s 6 (1 & (2)

<sup>49</sup> Ibid, s7 (3). The Corporate Affairs Commission established under the companies and Allied Matters Act 1990 is now the successor of the Registrar of companies.

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<sup>51</sup> Ibid, s.24. This prohibits any person (other than a company) to engaged in Petroleum operation either as a person or in partnership with any other person for the purpose of sharing the profit arising thereto

<sup>52</sup> 3 All NTC 315 at 345; *Tilmanans & co v SS knithsford Limited* (1908)2 Kb 385 at 403; (1908) Ac 207.

<sup>53</sup> Ibid, s.9 (1) (a-c)

- (ii) the value of all chargeable oil disposed of by the company in that period; and<sup>54</sup>
- (iii) all income of the company of that period incidental to and arising from any one or more of its petroleum operations

### **8.1 Assessable Profit Tax**

The assessable profits for each company or petroleum mining lease for any accounting period shall be the amount of the adjusted profit of that period after the deduction of the amount of any loss incurred by that company during any previous accounting period.<sup>55</sup> The assessable tax for any accounting period of a company shall be an amount equal to 85% of its chargeable profits of that period,<sup>56</sup> but for new oil fields before production; the tax rate is 65.75%. Under the production sharing contract for deep offshore, it is 50%. This is summed up by Omoregbe<sup>57</sup> thus: ‘... The nominal petroleum profits tax rate as specified under the Act is 85%. For new fields the rate is 65.75 before production and 85% after production has commenced. For production sharing contracts in respect of shallow water concessions the tax rate is 65.75%. For the first five years before production, after production the rate of 85% applies...’ This is the profit of an accounting period after the deduction of the adjusted profit of that period allowed under the Act.<sup>58</sup> The deductions allowed under section 20(2) & (4) of the Act. The deductions allowed on subsection 2 are the aggregate amount of all allowances due to the company for the accounting year under the provisions of the second schedule. They are;

- i. Petroleum Investment Allowance. These qualifying expenditures allowed a company in an accounting period in respect of an asset used wholly and exclusively by the company in petroleum operations. The deduction allowance is in respect of the accounting year in which the asset is first used.
- ii. Annual allowance: this is qualifying expenditure allowed a company in an accounting period in respect of an asset used wholly and exclusively for petroleum operations, whether or not an initial allowance maybe due to it. If the accounting period is less than a year, the allowance for the period shall be proportionately reduced.
- iii. Balancing Allowance: This qualifying expenditure allowed a company in an accounting period in respect of an asset, which immediately prior to its disposal, was wholly and exclusively used for petroleum operations. The allowable deduction is the excess of the residue of that expenditure over the value of the asset at the date of its disposal.

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 production of the percentage of profit of split. The deduction allowed under subsection (4) is a sum equal to 85 percent of the assessable profits of the accounting period, less 170 percent of the total amount of the deductions allowed under the Act<sup>59</sup> for the period. The limitation imposed here is to ensure that the amount of tax chargeable on the company for the accounting period shall not be less than 15 percent of the tax which would be chargeable on the company for the period, where no deductions allowed under section 20 of the Act for that period.<sup>60</sup> Subsection 5 requires that where the total amount of the allowances computed pursuant to subsection (2) cannot be deducted for reasons of insufficiency of assessable profits or no assessable profits or the limitation imposed y subsection (4). The total amount or part thereof that has not been deducted shall be added to the aggregate amount or part thereof that has not been deducted shall be added to the aggregate amount of allowances due to the company under the second schedule for the subsequent accounting period and shall be deemed to be allowances due to the company for the said subsequent accounting period.<sup>61</sup> In determining the adjusted profits of the company in any accounting period, no deductions shall be allowed in respect of:

- i. Disbursement or expenses not wholly and exclusively incurred in regard to petroleum operations.
- ii. Capital withdrawn or any sum employed or intended to be employed as capital;
- iii. Capital employed in improvements distinct from repairs.
- iv. Sums recoverable under an insurance or contract of indemnity;
- v. Rent or cost of repairs to any premises not engaged for the purposed of petroleum operations.
- vi. Amounts incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere.
- vii. Depreciation of any premises, buildings, structure, works of a permanent nature, plant, machinery or fixture;

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<sup>54</sup>Note that this include 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 and others.

<sup>55</sup> PIA, 2021, s. 265(i)

<sup>56</sup> PPTA, 2004, s.21(i)

<sup>57</sup> T. Omoregbe, *Oil and Gas law in Nigeria* (Lagos, Malthouse Law Books Publishers, 2001) 70. However, section 22 of PPTA provides:

- i. A crude oil producing company which executed a production sharing contract with 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 provisions of the production sharing contract.
- ii. 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.

<sup>58</sup> *Ibid*, Ss. 9(4) and 20. Section 20(1) PPTA defines the chargeable profits of an accounting period of a company as the amount of assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of the section.

<sup>59</sup> *Ibid* s, 17

<sup>60</sup> *Ibid* s. 20(3)

<sup>61</sup> I O Okauru (ed) *A comprehensive Tax History of Nigeria* (Ibadan Safari Books Ltd, 2012) 228.

- viii. Payments to any provident fund, savings, widows and orphans, society, scheme or fund except as allowed under another provisions.<sup>62</sup>
- ix. Any customs duty on goods (including articles or any other thing) imported by the company either for resale or personal; consumption of employed of the company, or where goods of the same quality to those so imported are produced in Nigeria and are available at the time of the imported good were ordered by the company for sale to the public at prices less or equivalent to the cost to the company of the imported goods;
- x. Any expenditure for the purchase of information relating to the existence and extent of petroleum deposits. This is calculated as the amount of assessable tax less the certain tax offset.<sup>63</sup> In computing the tax payable, the investment tax credit shall be applicable in full to petroleum operations in the contract such that chargeable tax is the amount of assessable tax less the investment credit.<sup>64</sup> The investment tax credit rate for a company operating under production service contract with the Nigeria National Petroleum Corporation (NNPC) Limited is 50% flat rate for the contract area, regardless of the duration of the contract.<sup>65</sup> The Investment Tax Credit allowance shall be offset against the chargeable tax in accordance with the provisions of the production sharing contract.

### **8.2 Adjusted profits**

Adjusted profits of an accounting period are the profits of that period after the deductions of allowable expenditure<sup>66</sup> and any adjustments necessary to exclude the profits or loss attributable to the transportation for chargeable oil,<sup>67</sup> which is assessable under Companies Income Tax Act. This profit is made for the period after deductions allowed and adjustments made in line with the provisions of the Act.<sup>68</sup> The deductions allowed under section 10(i) of the Act are;

- a. Any rent (other than rents included in the definition of royalties) incurred by the company for that period in respect of land or building occupied for its petroleum operations or compensation incurred for disturbance of surface rights or any like disturbance under an oil prospecting licence or oil mining lease;
- b. Sums incurred by way of interest upon money borrowed by the company where the interest was a payable on capital employed in carrying out petroleum operations;(however such sums would not be allowed as deductions if either company has interest in the other company; or both companies have interests in a third company directly or by proxy or both companies are subsidiaries of one mother company).
- c. Any expense incurred for the repair of premises, plant, machinery or fixture employed for the purpose of carrying on petroleum operations of for the renewal, repair or alteration of any implement, utensils or articles so employed
- d. Debts directly incurred to the company and proved to the satisfaction of the Board to have become bad or doubtful within the accounting period which shall not exceed the portion of debt proved to have become doubtful debt were due and payable prior to the commencement of the accounting period.

Again, expenditure in connection with geological and geo-physical surveys inclusive of the drilling of the first two appraisals wells in a particular filed including expenditure on cement and casing and well fixture and any other expenditure including intangible drilling costs in connection with drilling and appraisal or development. Any contributions to pension, provident or other society, scheme or fund and duties, custom and exercise duties, stamp duties, education tax, tax or any other rate, fee or other like charges.<sup>69</sup> Bank charges and scholarships are ordinarily not deductible as allowable expenses, except where the charges arise or were imposed by the Federal Government in the course of the company's operation relating to the petroleum operation, such charges will be allowed once they are incidental to petroleum operations. The decision is *Shell Petroleum, Development Company (Nig) Ltd v FBIR*<sup>70</sup> that the scholarship expenses incurred by a company will qualify as allowable expenses under section 10(i) of the Act which was followed in *Gulf oil company (Nigeria) Ltd FIRS*<sup>71</sup> is with respect wrong in law

### **8.3 Chargeable Profit**

The chargeable profit of any company for 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 the Act.<sup>72</sup> It is the amount of assessable profit of the accounting period after the deduction allowed in section 20 of the Act. It is the amount assessable profit of the accounting period less the sum total of capital allowances provided in the second schedule to the Act.<sup>73</sup> It is the amount to be allowed as a deduction under subsection (i) in respect of the said allowances shall be the aggregate amount computed under subsection (2) and the sum equal to 85% of the assessable profits of the accounting period less 17% 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.<sup>74</sup>

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<sup>62</sup> Ibid s. 10 (i) (k)

<sup>63</sup> Ibid s.22

<sup>64</sup> Ibid, s.22(3)

<sup>65</sup> Ibid s.22(2)

<sup>66</sup>Ibid, S.9(3)

<sup>67</sup> Ibid, S 14

<sup>68</sup> Ibid, ss. 10 &14

<sup>69</sup> Ibid, s. 10 (i) (a)-(i)

<sup>70</sup> (1996) 8 NWLR (pt 466) 256

<sup>71</sup> (2012) 7 TLRN 163. In *FIRS v SPDC (Nig) Ltd* (2018) 19 TLRN 13 and *FIRS v Mobile Prod. Nig Unltd* (2018) 37 TLRN 01 the court held that such charges or fees are not deductible.

<sup>72</sup> PIA, 2021, s.266(1)

<sup>73</sup> PPTA, LFN 2004, s. 20(2)

<sup>74</sup> Ibid, s. 20(4)

## 9. Deductions

In computing the adjusted profits of a company of any accounting period from its petroleum operations, there shall be deducted all outgoing and expenses wholly, exclusively and necessarily incurred whether within or outside Nigeria and necessarily incurred whether within or outside Nigeria for the purpose of those operations during that period.<sup>75</sup> The outgoing and expenses include rents in respect of land or building occupied under an oil prospecting and oil mining lease for disturbance of the surface rights or another like as compensation paid in respect of damages to crops, houses and interference for easement. All non-productive rents, the liability for which was incurred by the company during the period are inclusive. Royalties for liability for which was incurred in respect of natural gas sold and delivered to NNPC limited or sold to any other buyer or customer or disposed in any commercial manner and other royalties in respect of machineries, equipment and goods used by the company in petroleum operations, sums incurred by way of interest upon money borrowed and interest payable on capital employed or interest on any inter-company loans obtained under terms prevailing in the open market that is in London inter-bank offer rate by companies that engage in crude oil production operations. Expenses incurred for repair of premises, plant machinery or fixture employed for the purpose of petroleum operations or renewal, repair or alteration of any implement, utensils or articles so employed. Debts directly incurred and proved to the satisfaction of the Board, however there is a proviso.<sup>76</sup> In *Shell Petroleum Development Company of Nigeria Ltd v FBIR*,<sup>77</sup> SPDC submitted its returns for the period 1<sup>st</sup> January to 31<sup>st</sup> December 1993 to the Federal Board of Inland Revenue, showing the tax liability which the company was payable to it. FBIR disallowed four expenses claimed as deductible items in the returns filed by SPDC on the ground that such expenses were not deductible in computing chargeable tax. The four items were;

- a. Exchange losses on payment of petroleum profits tax
- b. Central Bank commission for payment of petroleum profit tax
- c. Scholarship expenses and
- d. Gifts and donation

Shell, however, at the hearing abandoned the fourth item on gifts and donations. The appeal was dismissed by the Body of Appeal Commissioners and on further appeal to the Federal High Court, the appeal was allowed with respect to exchange losses on payment of petroleum profits tax and Central Bank Commission. Both parties appealed to the court of Appeal which dismissed shell's appeal and allowed the appeal by FBIR. At the Supreme Court, the appeal of Shell Company was allowed. The Apex Court held that exchange losses are incidental for shell to pay debt for the purpose of Petroleum operations which could not have been incurred but for the agreement between shell and Federal Government. Another reasoning of the court is that the payment of Bank charges was on the directive and further the creation of scholarship expenses was a statutory obligation to be observed by Shell and was therefore incidental and deductible. By the decision, the Apex Court exhibited with respect lack of understanding of the *sui generis* nature of tax statutes. The court followed and relied on the administrative directive of a government agency which the court likened to a debt to that agency under the provisions of the Act<sup>78</sup> despite the dictum of Belgore CJ in *Gulf Oil company of Nigeria Ltd v FBIR*,<sup>79</sup> which highlighted a long line of decision on the same interpretation, thus;

... I have no doubt in my mind as to the meaning of the subsection. It may be unique or general in taxation legislation but it is clear, meaningful and unambiguous. Under the provision deduction allowed in the Harrod (Buenos Aires) case (ie Harrods (Buenos Aires) Ltd v Taylor-Gooby (H.M Inspector of taxes) (1961-64) 41TC 50 will not be allowed supposing one chooses or one is asked to post one's tax assessment to the tax authority the expenses of postage village to a Government Treasury in order to pay one's tax, such expenses incurred by travelling would not be allowed under subsection (i) (f) of section 11...

The court in constructing the provisions of the Petroleum Profit Tax Act refused to apply a literal rule of interpretation given to a revenue statute, that is, applying the ordinary meaning of the phrase "petroleum operations but resorted to an interpretation anchored on the principle of equity.<sup>80</sup> In *Partigton v AG*,<sup>81</sup> Lord Cain, stated *inter alia*;... in other words, if there be admissible, in any statute, what is called an equitable construction such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute. Again, the decision did not appreciate the rule that judicial reasoning has always leaned on the side of calculating tax liability in the currency of the country of assessment as established in *Payne v The Deputy Commissioner of Taxation*.<sup>82</sup> By the decision and later statutory provision<sup>83</sup> the Nigerian National currency was sacrificed at the altar of convenience notwithstanding that a country's currency is an index of its sovereignty.

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<sup>75</sup> Ibid, s.10(1)

<sup>76</sup> The deductions shall not exceed that portion of the debt which is proved to have become doubtful during the period. Again, amount deducted previously in respect of bad or doubtful debts shall for the purposes of subsection (1) (c) of section a be treated as income

<sup>77</sup> (1996) 8 NWLR (pt.466) 256

<sup>78</sup> Ibid, s.41

<sup>79</sup> Suit no FHE/L/3A/83(unreported) judgment delivered on 30<sup>th</sup> January 1985

<sup>80</sup> *Cape Brandy Syndicate v IRC* (1921) 12 TC 358, which stated that one has to look merely at which is clearly state. There is no room for adopting principle of equity. There is no presumption and noting is to be read in, implied but a fair consideration of the language used.

<sup>81</sup> (1869) LR 4HL100

<sup>82</sup> (1936) 2 All ER 793

<sup>83</sup> PPTA, LFN,2004, s.40(1) (2)



### **10. Deductions not allowed**

The Act<sup>84</sup> provides that no company shall be allowed to deduct disbursements or expense not being money wholly and exclusively laid without or expended or any liability not being a liability wholly or exclusively incurred for the purpose of those operations, capital withdraw or sum employed or intended to be employed as such in improvement distinct from repairs will be disallowed. An amount incurred in respect of any income tax, profit tax or other similar tax whether charged within Nigeria or elsewhere.

### **11. Allowances under Petroleum profit Tax**

#### **Capital Allowance**

Allowances accrued to companies engaged in Petroleum operation. Acquisition of right in or over petroleum deposits searching for and discovery and testing of petroleum deposits and winning access to it of the construction for any work or building s which are likely to be of little or no value when the petroleum operations for which they were constructed ceased to be carried on. The items that qualify as capital allowance are qualifying plant expenditure building expenditure and qualifying drilling expenditure.<sup>85</sup> The capital allowance is claimed within five years; 20 percent the first years, 20 percent, 2<sup>nd</sup>, 20 percent, 20 percent and 19 percent in the fifth year.

#### **Petroleum Investment Allowance (PIA)**

This is granted in the first years as a qualifying capital expenditure incurred during petroleum operations. In the calculation of PIA, Onshore operations is 5percent, offshore up to and including 100 meters above continental shelves is 10 percent, offshore operations between 100-200 meters is 15 percent and offshore operations beyond 200 meters is 20 percent.<sup>86</sup> There is Annual Allowance and balancing Allowance just like Capital Allowance, the rate is at 20 percent for the first four years and the fifth year is 19 percent. The Balancing Allowance occurs when the sales proceeds of the assets used in petroleum operations is less than the tax was written down the value of the qualifying capital expenditure as at the time of disposal. The proviso is that the assets must be used for petroleum operations when the qualifying expenditure was incurred.<sup>87</sup> Note that excess on the value at the date of disposal, over the residue of the expenditure at that date shall be treated as an income of the company for that accounting period and as such taxable.<sup>88</sup>

#### **Investment Tax Allowance/tax Credit**

The incentives are available to a company where a crude oil producing company executes a production sharing contract with the Nigerian National Petroleum Corporation.

#### **Incentives for Utilization of Associated Gas<sup>89</sup>**

The following incentives shall apply to a company engaged in the utilization of associated gas, that is investment required to separate crude oil and gas from the reservoir into usable products shall be considered as part of the oil field development.<sup>90</sup> Capital investment on facilities to deliver associated gas in usable form at utilization or designated custody transfer points is treated for tax purposes as part of capital investments for oil development.

Note that oil industry should stop enjoying pioneer reliefs 50 years after investment. This will held Nigerian Government to deal with the excesses in the sector.

### **12. Chargeable Tax**

Chargeable Tax is the amount of assessable tax after the investment tax credit is deducted. 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 which is at the 50 percent flat rate.

### **13. Assessment and collection of Petroleum Profit Tax**

#### **Tax rates**

The Petroleum Profit Tax Act<sup>91</sup> provides tax rate in the petroleum industry. The Assessable tax is levied on the profits of petroleum companies at the rate of 85% for exported crude oil, 65.75% under the domestic sale and under the production sharing contract for deep offshore. Furthermore, companies holding oil concession and start oil production on or after 1<sup>st</sup> of April 1977 shall pay at 65.75% until their production costs are fully amortized less the 19% residual book retention, when the company shall be taxed at the rate of 85%.<sup>92</sup>

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<sup>84</sup> Ibid, s. 13 (1)

<sup>85</sup> Ibid, schedule; para 1(1)

<sup>86</sup> Ibid, second schedule, table 11

<sup>87</sup> Ibid, paragraph 8

<sup>88</sup> Ibid Paragraph 9

<sup>89</sup> Ibid, s.11

<sup>90</sup> Ibid, s.11 (1) (a), 22(2)-(5)

<sup>91</sup> Ibid, s.21(1)

<sup>92</sup> Ibid s.21(2) and second schedule, paragraph 6(2)

### **Assessment of Tax**

The assessment of the liability of every company for every accounting period shall be as soon as due or after the expiration of the title allowed for delivery of accounts and particulars.<sup>93</sup> Where a company delivers returns, the Board may accept and make an assessment accordingly or refuse to accept the same and proceed to estimate the amount of the tax to be paid based on best of its judgment.<sup>94</sup> This is otherwise referred to as original assessment where the Board will rely on the returns filed and assess the company. On the other hand, where the board discovers that the returns are incorrect or incomplete, the board will assess the company based on their estimation, best of judgment. Again, the board could come up with an additional assessment when the board discovers that the company had been under assessed or have not be assessed within 6 years after the expiration of that accounting period. In *Mobil Oil Nigeria Ltd v FBIR*,<sup>95</sup> the Supreme Court adopted the interpretation of Lord Denning MR for the word discovered in an English case of *Parking v Cattle*.<sup>96</sup> In *Gulf Oil Company (Nig) Ltd v FBIR*,<sup>97</sup> wherein the respondent raises an additional assessment on the Appellant for the years 1974,1975,1976 and 1977 totaling #3,250,804.91. The Appellant contended that the additional assessment in respect of 1974 and 1975 raised in 1982 were statute barred. Although the respondent, FBIR argued that the negotiations between the appellant and the respondent did affect the time limit, the Federal High Court allowed the appeal stating that the commissioners were therefore wrong. This was adopted by the Court of Appeal. Assessment could also be amended where the tax payer assessed 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 served on the tax payer.<sup>98</sup> This is a situation where the company objects to the original assessment in writing and sent to the Board within 21 days or any other period allowed by the Act, from date of service of such original assessment.<sup>99</sup> Where a company engaged in petroleum operation fails to agree with the Board on the amount of tax, the Board can revise the assessment and service the notice to the taxpayer.<sup>100</sup> Any assessment made, amended, revised or determined on a valid objection or appeal shall be final and conclusive assessment.<sup>101</sup>

### **14. Enforcement of Petroleum Profit Tax**

By the provisions of the Federal Inland Revenue (Establishment) Act,<sup>102</sup> the service is permitted to co-opt the assistance of law enforcement agencies in the enforcement of the tax due and levy distraint. This is where the companies did not conduct self assessment and did not file returns and FIRS undertakes the necessary assessment and after same being final and conclusive upon service of demand notice.<sup>103</sup> In distraining with an order of court, the properties collected shall be kept for 14 days, if the tax debt is not settled the FIRS will sale them. On the other hand, a company aggrieved by an assessment made on him may appeal against the Tax Appeal Tribunal within 30 days of service of notice on him.<sup>104</sup> The decision of TAT is to be registered with the Federal High Court through the Chief Registrar.<sup>105</sup> By paragraph 17, of the Fifth Schedule to the Federal Inland Revenue (Establishment) Act, 2007, further appeal from the decision of TAT lies with the Federal High Court on a point of law. A notice with that regard shall be made within 30 days and the secretary shall immediately compile the record and transmit same to the Registrar of the Federal High Court. Further appeals go to the Court of Appeal and Supreme Court.<sup>106</sup>

### **15. Penalty for Non-Payment of Tax**

Any installment of tax due and payable but not paid within the appropriate time limit,<sup>107</sup> the penalty shall be the sum equal to five percent of the amount of the installment of tax due and payable shall be added thereto. Where the notice is served and not paid within one month from the date of the service of the demand notice, an enforcement of the payment is commenced. Tax due but unpaid within one month as prescribed the company shall be guilty of an offence,<sup>108</sup> with a fine N10,000.00. Where in the course of its adjudication, the Tribunal discovers evidence of possible criminality; the tribunal will pass the information to the appropriate criminal prosecuting authority. The duty of prosecuting will be passed unto the Attorney-General of the Federation or the Attorney-general of any state of the federation or other relevant law enforcement agency.<sup>109</sup> The general provision of the Act,<sup>110</sup> is that any person found guilty of an offence against the Act or rule included under the Act for which no other penalty is specifically provided, shall be liable to a fine of N10,000 and an additional sum of N2,000 for each day of default or six months imprisonment. The offences include;

- i. Engaging in joint or partnership in petroleum operations with a view to submit the profit.<sup>111</sup>

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<sup>93</sup> Ibid, ss.20 & 35, FIRS Act, s.68 & First Schedule to the Act

<sup>94</sup> Ibid, s30,31,32,33,34, and 35 PPTAs

<sup>95</sup> Suit No SC/488/75

<sup>96</sup> (1971) TR 77

<sup>97</sup> (1997) 3 All NTC 485

<sup>98</sup> PPTA, 2004, s.38(5)

<sup>99</sup> However, see Federal Inland Revenue (Establishment) Act 207, s.68(2)

<sup>100</sup> PPTA, 2004, op cot s.38 (6)

<sup>101</sup> Ibid, S.43(1)

<sup>102</sup> FIRS(E) Act 2007, s. 36(1)

<sup>103</sup> Ibid, s. 3291) (d)

<sup>104</sup> Ibid, s 38(6) 1. Paragraph 13(2) of Fifth schedule of FIRS Act

<sup>105</sup> Ibid, 5<sup>th</sup> Schedule, paragraph 16(2)

<sup>106</sup> Ibid, s.42(4)

<sup>107</sup> PPTA, 2004, S.46 but see also ss 41 and 45

<sup>108</sup> Ibid, S.46(2)

<sup>109</sup> FIRS (E) Act 2007, 5<sup>th</sup> Schedule paragraph 12

<sup>110</sup> PPTA, 2004, S.51

<sup>111</sup> Ibid, s.24(1)

- ii. Failure to submit returns.<sup>112</sup>
- iii. Failure to deliver accounts, particulars or information or to keep records required.
- iv. Failure to comply with the requirements of a notice served on him.
- v. Failure to comply with the requirement for accounts for profits and losses.<sup>113</sup>
- vi. Failure to attend in answers or summons served on him or fails to answer any question lawfully put to him.
- vii. Failure to keep sufficient records<sup>114</sup>

The offence of making a false statement or false representation or forgery, fraudulently, lends in any form of aid, assist, and counseling, inciting or inducing any other person to make or deliver false return or statement, keep or preparing any false return or statement and refusal or neglected to pay tax. This is liable to a fine of N1,000 and triple the amount of tax for which the person assessable is liable for imprisonment or six months or both. Again, any person who withheld tax deducted or did not deduct at all is guilty of an offence and liable to a fine and liable to a fine of 200% of tax withheld or not remitted and interest at the prevailing commercial rate.<sup>115</sup> However, the offence by authorized or unauthorized person, that is,

- a. Demands in excess of an assessment
- b. Withholds a portion of tax collected
- c. Enters false returns of the amount collected
- d. Defrauds any person, embezzles or use his position to deal wrongfully with enter the Board or individual.
- e. Not being authorized collected or attempts to collect tax

In all, the offender found guilty shall be liable to a fine of N600 or to imprisonment for three years or both.

#### **16. Recovery of Tax and Commencement of suit**

The suit for the recovery of tax shall be maintained in a court of competent jurisdiction and in the official name of the Board. The official name of the Board is Federal Inland Revenue Service (FIRS).<sup>116</sup>

#### **17. Repayment of Tax**

Claim for repayment of any tax overpaid shall be made in writing within six years next after the end of the accounting period to which it relates.<sup>117</sup> The Board may dispute the claim and issue notice of refusal to admit the claim,<sup>118</sup> where the board accepts or under any order of a competent jurisdiction, a certificate to that amount shall be given. The Account General of the Federation shall upon the receipt of the Certificate cause the repayment to be made.

#### **18. Conclusion and Recommendations**

The passage of the long awaited Act is a major win for the petroleum industry as a whole and the country as a whole. It will help to attract foreign investment in the sector. The Petroleum Industry Act represents an effort to revamp the oil sector. It set out standards for the management the foremost Nigeria's natural resources. It made the upstream sector a commercially and profit oriented business, the economic and social development of the host communities. The duty introduced is help protect oil assets in the communities from vandalism. Note that it introduced 3% contribution to Host Communities Development Trust Fund and 30% profit to NNPC Ltd for the Frontier Basin. The PIA introduced a Hydrocarbon Tax without necessary amending Petroleum Profit Tax Act. This tax applies to crude oil, condensates and natural gas liquids produced from associated gas operations. It is charged and assessed on profits from crude oil on such operations in each accounting period at the stated rates for new acreages and converted acreages respectively. While commending the effort to fast-track the turnaround in the petroleum sector, there is need to avoid creating more problems while attempting to solve another. It is recommended that the following be addressed: The existence of two laws of PIA and PPTA will create more confusion; one should be made to repeal the other. For instance, sections 260 to 301 of PIA conflicts with the PPTA provisions. Under the Petroleum Industry Act, there are a lot of challenges of interpretation and imprecision that calls for amendment. For instance, there is the creation of 3 percent levy for the host communities whereas there exists, Niger Delta Development levy. There should be either the aggregation of those levies or scraping of one. The provision of 3 percent contribution for the host community but 30 percent for the frontier Basin is not fair. The introduction of the new Hydrocarbon Tax will lead to an unnecessary tension in the country as the amount that will be accruing to the revenue pool; the Federation Account will be low. This will also call for constitutional amendment.

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<sup>112</sup> Ibid, s.33(1)

<sup>113</sup> Ibid, s. 30 & 52 (1) (b)

<sup>114</sup> Ibid s.29

<sup>115</sup> Ibid, s.54

<sup>116</sup> FIRS (E) Act, 2007, s.48 and 59

<sup>117</sup> PPTA, 2004, s.50(1)

<sup>118</sup>