



CHALLENGES CONFRONTING THE DISTRIBUTION OF PETROLEUM PRODUCT UNDER THE PETROLEUM PROFIT TAX LAWS IN NIGERIA

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ABSTRACT

The aim of this paper is to examine the ownership, the legal framework as well as the basic components of the petroleum profits which components are revenue, adjust eel profits, assessable profit, chargeable profit, assessable tax and chargeable tax. In Nigeria, the petroleum industry is the bedrock of the economy and is responsible for about 90 percent of her total revenue. Her other sources of revenue include, inter alia, agriculture, solid minerals, goods and services and most importantly taxes collected from various sources including the petroleum industry. Companies and corporations in Nigeria are taxed principally under the Companies Income Tax Act. Cap 60. Law of the Federation of Nigeria, 1990. While companies engaged in petroleum operations are taxed specially under the Petroleum Profit Tax Act, as amended (PPTA Cap.354, LFN, 1990). Because of the peculiar and complicated nature of the oil industry, the Federal Board of Inland Revenue (FAIR) is saddled with the onerous task of collecting taxes from the various companies including those engaged in the oil business. This paper will examine the petroleum profit taxation system established under the PPTA, with a view to assessing whether or not it is effective in dealing with the myriad of problems associated with the financial areas of the oil industry particularly the problem of tax evasion on the part of some companies and deliberate fraudulent and incorrect assessment of the tax due and payable on petroleum profits by others. This paper also focuses on the assessment of the petroleum profit tax under the Petroleum Profit Tax Act. Cap P13. Laws of Federation of Nigeria 2004. as well as judicial authorities" regarding same. Equally not in contention is the fact that oil explorations and exploitation require enormous amount of money and technological know-how to execute. This paper also concludes that petroleum profit tax is one of the most important components direct taxes in Nigeria that affects the economic growth, therefore should be properly managed to reduce the level of evasion by petroleum exploration companies in Nigeria. Finally, the paper recommends among others that companies involved in petroleum operations should be properly supervised by the relevant tax authority (FIRS) to reduce the level of tax evasion, government should show more accountability in the management of tax revenue and finally, the level of corruption in Nigeria and that of government officials should be drastically reduced to win the confidence of tax payers for voluntary tax compliance. More so, government policy should create a conducive-business environment that will attract foreign investors to the country.



Keywords: Challenges; Distribution; Petroleum Product; Petroleum Profit; Tax Laws.

Introduction

Petroleum has been defined as naturally occurring crude oil consisting of a complex mix of hydrocarbons of various molecular weights and other liquid organic compounds as well as inorganic compounds. The Petroleum Act⁸ defines petroleum to mean mineral oil (or any related or natural gas as it exists in its natural state in strata and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation. Section 2 of the Petroleum Profit Tax Act defines petroleum operations to mean:

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

The definition of petroleum operations is significant in the area of taxation. This is because profit derived from petroleum operations are subject to Petroleum Profit Tax Act while those from source other than petroleum operations are subject to Company Income Tax.

Petroleum Taxation in Nigeria

Dalton defines tax as a compulsory contribution imposed by a public authority, irrespective of the exact amount of service rendered to the taxpayer in return, and not imposed as penalty for any legal fence. The history of taxation can be traced to the colonial era when the High Commissioner of the Northern Protectorate, Sir Fredrick Lugard issued the Stamp Duties Proclamation 1903 and the Native Revenue Proclamation in 1906.¹⁰ Since the introduction of taxation into the Nigerian economy, there has been a steady progress in improving the tax regime and various exemptions have been made to modernise, expand, reform, and improve the tax processes. Tax revenue accruing to the Nigerian economy has been broadly categorized into two. They include;

1. Petroleum revenue which includes petroleum profit tax, revenue from royalties, rents, oil pipeline and licence fees, signature bonuses, and other levies obtainable in the petroleum sector, and
2. Non-petroleum revenue which includes revenues such as direct and indirect taxes paid by other sectors of the economy

Taxation the petroleum industry became expedient after the discovery of oil in commercial quantity, which brought about the need to enact legislation to regulate taxation in the industry. The first legislation in this regard was the Petroleum Profit Tax Act of 1959. The Petroleum Profit Tax Act (PPTA) is the most comprehensive legislation regulating petroleum taxation in Nigeria. However, various other laws have been enacted in addition to the Petroleum Profit Tax Act to regulate taxation in the petroleum sector, even as there are now several fees and levies payable by



petroleum operators to the government. These other laws deal with some aspects of Petroleum taxation like the Deep Offshore Inland Basin Production Sharing Contract Act (DOIBPSCA), Company income Tax Act (CITA), Tertiary Education Trust Fund (Establishment, ETC) Act, 2011 Delta Development Commission Act, The Coastal and Inland Shipping (Cabotage) Act Oil Terminal Dues Act. etc.

The Nigerian Petroleum Industry is very critical to the survival of the nation's economy. Consequently, much attention has been given to the administration of petroleum revenue.

Currently, attempt is ongoing to pass into law, the Petroleum Industry fiscal Bill (PIFB) which if enacted will represent the most comprehensive law since the history of Nigeria, to regulate the fiscal activities in the petroleum sector, including the administration of oil revenue.

Petroleum Profit Tax Laws of Nigeria

The Petroleum Profit Tax (PPT) Laws in Nigeria govern the taxation of companies engaged in petroleum exploration and production activities within the country. The main legislation that governs the PPT in Nigeria is the Petroleum Profits Tax Act (PPTA) of 1959, as amended over the years. One of the key features and provisions of the PPT Laws in Nigeria include Taxable Entities. The PPT applies to companies engaged in upstream petroleum operations, including exploration, production, and processing of petroleum. This includes both multinational oil companies and indigenous oil and gas companies.¹

The Petroleum Profit Tax (PPT) in Nigeria applies to companies involved in upstream petroleum operations, which include activities related to the exploration, production, and processing of petroleum resources. This encompasses both multinational oil companies and indigenous oil and gas companies operating in Nigeria². Whether a company is multinational or indigenous, if it engages in upstream petroleum operations within Nigeria, it is subject to the provisions of the PPT Act and is required to pay the applicable tax on its petroleum profits. The PPT aims to generate revenue for the Nigerian government from the exploitation of its petroleum resources and ensure a fair share of profits from these operations.

Another feature of the Petroleum Profit Tax (PPT) in Nigeria is Tax Rate³. The current standard tax rate for petroleum profit tax in Nigeria is 50%. However, there are specific provisions for certain types of operations, such as deep offshore and inland basin activities, which may have different tax rates. Regarding specific provisions for certain types of operations, such as deep offshore and inland basin activities, there have been discussions and amendments to the tax regime in Nigeria in recent years. The Finance Act of 2019 introduced changes to the tax rates for deep offshore and inland basin activities. It aimed to provide a framework for adjusting the tax rate based on certain conditions, such as the price of oil and profitability of the projects.

¹ F. EMIRI O In: F. EMIRI and G. DEINDUOMO. Law and Petroleum Industry in Nigeria. Malthouse Publication Lagos. 2009.

² FAGBOHUN O. The Law of Oil Pollution and Environmental Restoration, Odade Publishers, Lagos, 2010.

³ FAGBOHUN O. The Law of Oil Pollution and Environmental Restoration, Odade Publishers, Lagos, 2010.



Under the revised provisions, a reduced tax rate of 20% was introduced for deep offshore operation, subject to meeting specific criteria. However, it's important to note that the specific conditions and thresholds for determining the applicable tax rates for deep offshore and inland basin activities would require referencing the most recent legislation and guidelines issued by the Nigerian tax authorities.

Taxable income is another feature of the Petroleum Profit Tax (PPT) in Nigeria. The taxable income for petroleum companies is determined based on the accounting profit as adjusted for specific provisions outlined in the PPTA. These adjustments include deductible expenses, capital allowances, and certain disallowed expenses⁴. The taxable income for petroleum companies Nigeria, as per the provisions of the Petroleum Profits Tax Act (PPTA), is determined based on the accounting profit with adjustments. These adjustments include deductible expenses, capital allowances, and certain disallowed expenses.

Deductible Expenses: Petroleum companies are allowed to deduct certain expenses incurred in the course of their petroleum operations when calculating their taxable income. These deductible - irises may include costs related to exploration, development, production, processing, and transportation of petroleum. Examples of deductible expenses may include employee salaries, equipment costs, maintenance expenses, operating expenses, and administrative costs directly related to petroleum operations⁵.

The PPTA allows for the deduction of capital allowances on qualifying capital expenditures incurred in the course of petroleum operations. These capital allowances are deductions granted for the depreciation or wear and tear of qualifying assets used in the business. The PPTA specifies the rates and guidelines for calculating capital allowances on different categories of assets⁶.

Certain expenses may be disallowed or subject to limitations for tax purposes. These may include expenses not directly related to petroleum operations, expenses incurred for non-business purposes, expenses not supported by appropriate documentation, or expenses that arc not in accordance with the provisions of the PPTA. Disallowed expenses are not deductible for the purpose of determining taxable income.

More so, capital allowances are another feature of the Petroleum Profit fax (PPT) in Nigeria. The PPTA provides for the deduction of capital allowances on qualifying capital expenditures incurred in the course of petroleum operations. These allowances are calculated based on prescribed rates and guidelines provided by the Nigerian tax authorities⁷. The PPTA provides prescribed rates and guideline for calculating capital allowances on different categories of assets. These rates and may

⁴ F. EMIRI O In: F. EMIRI and G. DEINDUOMO. Law and Petroleum Industry in Nigeria. Malthouse Publication Lagos. 2009

⁵ F. EMIRI O In: F. EMIRI and G. DEINDUOMO. Law and Petroleum Industry in Nigeria. Malthouse Publication Lagos. 2009

⁶ OLISA M. M. (2003) Nigerian Petroleum Law and Practice (2nd edition) Jonia Ventures Limited Lagos

⁷ Ibid



specify the allowable percentage of the cost of an asset that can be claimed as a capital allowance over its useful life.

The Nigerian tax authorities determine the rates and guidelines for capital allowances, taking into consideration factors such as the type of asset, its expected useful life, and industry standards. These rates and guidelines are periodically reviewed and may be subject to change. By claiming capital allowances, petroleum companies can reduce their taxable income, thereby reducing the amount of tax payable. It provides an incentive for companies to invest in and maintain capital assets necessary for their petroleum operations. It is important for petroleum companies to consult the relevant legislation, guidelines, and any updates or amendments issued by the Nigerian tax authorities to determine the applicable rates and guidelines for calculating capital allowances accurately.

In addition, another feature of the Petroleum Profit Tax (PPT) in Nigeria is the royalties and other charges. In addition to the PPT, petroleum companies are also subject to the payment of royalties and other charges, which are separate from the income tax. Royalties are typically based on the volume or value of petroleum produced. In addition to the Petroleum Profit tax (PPT), petroleum companies operating in Nigeria are also subject to the payment of royalties and other charges, which are separate from income tax⁸.

Royalties: Royalties are payments made by petroleum companies to the government based on the volume or value of petroleum produced. The specific royalty rates and calculation methods are determined by the Nigerian government and may vary depending on factors such as the type of petroleum location, and contractual agreements. The applicable rate of royalty depends on the water depth in which the upstream corporation carries out its petroleum operations. The highest applicable rate for royalty in Nigeria's oil and gas industry is 20% for on-shore production and the lowest rate is 0% for water depths in excess of 1,000 metres. 157 As mentioned earlier, royalties are paid under PSC arrangements by allocating royalty oil to the federal government through the NNPC⁹.

Other charges: Apart from royalties, petroleum companies may be subject to other charges or levies imposed by the government. These charges can include signature bonuses, development license fees, rent or annual fees for leases, and other regulatory fees related to petroleum operations.

Investment Incentives: The PPTA also provides certain investment incentives to encourage exploration and production activities in Nigeria. These incentives are designed to attract investment, stimulate economic growth, and support the development of the petroleum industry. Some of the investment incentives available under the PPTA include:

⁸ OLISA M. M. (2003) Nigerian Petroleum Law and Practice (2nd edition) Jonia Ventures Limited Lagos

⁹ CAP P10 LFN, 2010



Tax Holidays: The PPTA grants tax holidays during the initial years of petroleum operations, allowing companies to be exempted from paying income tax for a specified period. The duration of the tax holiday may vary based on factors such as the location and nature of the operation.

Pioneer Status: Companies engaged in specific industries, including petroleum exploration and production, may be eligible for pioneer status. Pioneer status provides additional tax incentives, including reduced tax rates or exemptions, for qualifying expenditures¹⁰.

Investment Tax Credits: The PPTA allows for the offsetting of certain qualifying expenditures against future tax liabilities through investment tax credits. These credits can be claimed for expenditures such as research and development, local content development, and infrastructure development¹¹.

Petroleum Act

The Petroleum Act (The Act) and the regulations issued pursuant to it is the main legislation governing matters relating to petroleum exploration and production in Nigeria. The statutory intent of this Act¹² is to provide for the exploration of petroleum from the territorial waters and continental shelf of Nigeria and to vest the ownership of all on shore and off-shore including the revenue from the petroleum resources derivable there from, in the Federal Government and for all other matters incidental thereto. Section 2 (1) (a)-(c) of the Act¹³ provides that the Oil exploration licence, Oil prospecting licence, and Oil mining lease may be granted by the Minister subject to this Act. Sub-section (2)¹⁴ of the same section gave a condition upon which such licences can only be granted, which is to the effect that a licence can only be given to a company registered under Companies and Allied Matters Act.

What the section stated above attempted to do, is to first of all leave the power to issue licences and mining leases, a sensitive and probably the most important license in an oil and gas industry to the hands of an individual without any checks from any arm of government or institution. Secondly the section did not provide any due process that might be followed by a prospective applicant of the licence to ensure transparency in the issuance of such licences. It is expected that there should be an organization, an institution or a body separate from the office of the Minister that deals with the issue of compliance from the prospective, applicants of the licence in the way Bureau of Public Procurement BPP ensures transparency and due process in the supply chain management public sector of oil and gas industry and other public organisations. From the wordings of the section particularly the sub-section (2)¹⁵ the only requirement for the qualification for such licence is that the company must be registered under Company and Allied Matters Act.

¹⁰ Paragraph,15 of the 1st Schedule to the petroleum Act

¹¹ Cap T16, LFN, 2010

¹² Petroleum Act, Cap P. 10, LFN, 2010

¹³ Ibid at Section 2

¹⁴ Ibid

¹⁵ Ibid



So, by implication, giving the section a literary meaning any company whether or not it has the manpower, financial viability, technical skills, equipment and expertise can simply apply and probably be granted a license So long as it is registered under the Companies and Allied Matters Act. Section 4 (1)¹⁶ of the Act¹⁷ provides that; "Subject to this section, no person shall import, store, sell or distribute any petroleum product in Nigeria without a licence granted by the Minister. Section 4 (2) went further to say that subsection (1) of this Act shall not apply in respect of:-

- a) Storage, sale, or distribution of not more than 500 litres of and such other categories of petroleum products as may be exempted from the application of subsection (1) of this section by the Minister by order published in the Federal Gazette.
- b) Storage of petroleum products undertaken otherwise than in connection with the importation, sale or distribution of petroleum products.

Apart from the impracticability of enforcing this particular provision of this Act, the Act did not even provide for the mode or ways of enforcing this provision. For instance, which agency. Parastatals, or institution is responsible for uncovering the offenders and bringing them to book? Essentially. the Act does not address the environmental effect of petroleum exploratory activities. Most of the regulations are concerned with the safety of the personnel working in the oil wells and the safety precautions to be observed in the course of oil exploration activities and the Department of Petroleum Resources DPR, under the Ministry of Petroleum Resources which is charged with the power to enforce the Petroleum Regulations. The Petroleum Act and Regulations created offences and imposed penalties for noncompliance, which include short term imprisonment and payment of meager amount as fine. It is submitted that these penalties were not deterrent enough as it as it \ \$ cheaper, economical and desirable for defaulting company to violate these regulations and pay necessary the imposed fine as specified by the Act than to comply with these regulations.¹⁸

Oil Pipeline Act

The Oil Pipeline Act¹⁹ was enacted to make provision for licenses to be granted for the establishment and maintenance of pipelines incidental and supplementary to oil fields and oil mining for purposes ancillary to such pipelines. Section 4 (1) of the Act²⁰ made provisions for the grant of a permit to survey the route for an oil pipeline for the transport of mineral oil. natural gas or such other products.²¹ Although not expressly stated, the Act²² has as part of its set goals the protection of the environment. Principally, the holder of a permit to survey is expected to take all reasonable steps to avoid damage to any land entered upon. Where there is any damage done, the

¹⁶ Petroleum Act, CAP, P10, LFN, 2010

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Oil Pipeline Act, Cap 07, LFN, 2010

²⁰ G. DEINDUOMO (2009) In: I .EV11RI and G.DK1NDUOMO, "Law and Petroleum Industry In Nigeria" Malthouse Publication, Lagos.

²¹ ETIKERENTSE G. (2nd Edition) "Petroleum Law in Nigeria", Lagos Nigeria

²² S. EABILA and D. KDERRL In: F. EMIRI and G. DHINDUOMO, Law and Petroleum Industry in Nigeria, Malthouse Publication, Lagos, 2009



holder is expected to compensate the owner, objection can be made by any person whose land or interest in land may be injuriously affected by the grant of a license but, where a licensee is granted, the holder is expected to pay compensation to any person whose land or interest in land has been injuriously affected or any person suffering damage by reason of or as a consequence of the holder's negligence to make good a damage. Additionally, the Act²³ prohibits the alteration in the flow of water in a navigable waterway, or the construction of works, in, under or over any navigable waterway that might obstruct or interfere with the free and safe passage of vessels, canoes or other craft, by an oil pipeline licensee.

A licensee is also prohibited from making any construction in, under or over, or depositing materials in or altering the flow of water required for domestic, industrial or irrigational use, hereby diminishing or restricting the quantity of water available for these purposes, or constructing works or making deposits in any waterways that would cause flooding or erosion without the prior permission in writing of the Minister. There are restrictions on vested land while there are also specific Provisions allowing access to government officials to inspect and be sure things are being done in accordance with the licence. In addition, subsection 4 of section 17 of the Act²⁴ also made every oil pipeline license granted under of the Act subject to the provisions the Act and any regulations in force concerning the prevention of pollution of land and waters. Much as it can be said that the Act made adequate provisions for the protection of individual interests and concerns, its weakness, lies in its failure to make the restoration of land upon which compensation is paid mandatory²⁵ in a way that is commendable, the Act made provision for courts to play roles that would ensure just assessment of compensation not only for damage done to buildings, profitable trees or crops, disturbance, or damage suffered by reason of or as a consequence of a holder's negligence, but also for loss in value of the land or interests in land. The grant of a licence is also deemed to include among others a condition to indemnify the Minister against any claims arising from injury to any person or damage to any public or private property as a result of any act or thing done by the holder of the licence or his agents, servants or workmen in accordance with the licence.²⁶

The problem, however, is the faith in and the assumption that man is capable of fulfilling his responsibilities towards nature without much prompting. Thus, a provision like section 21 of the Act²⁷ which provides that where the interest injuriously affected are those of a local community, the court may order the compensation to be paid to any chief, headman or member of that community on behalf of such community or that it be paid in accordance with a scheme of contribution approved by the court or that it be paid into a fund administered by a person approved by the court on trust for application to the general, social or educational benefit and advancement

²³ Ibid

²⁴ G. DEINDUOMO In: F. KMIRI and G. DEINDUOMO, Law and Petroleum Industry In Nigeria. Malthouse Publication, Lagos, 2009

²⁵ FAGBOHUN O. The Law of Oil Pollution and Environmental Restoration, Odade Publishers, Lagos

²⁶ OMOROGBE Y (2001). Oil and Gas Law in Nigeria, Malthouse Publication, Lagos

²⁷ Oil Pipeline Act, CAP 023 LFN, 2010



of that community or any section thereof.²⁸ The above approach, for failing to provide a clear guide as to how compensation received would mandatorily be applied to the respective heads of claim under which it is received is too simplistic an approach to tackle the challenges on ground. To start with, the low standard of living of Nigerians is such that restoration of land from harm done to it is the least of a land owners' priority when compensation is paid. Furthermore, the widespread ignorance of many land owners and communities is such that technical data and detailed evaluation natural system (which is usually complex) cannot easily be undertaken.

Additionally, another feature of the Petroleum Profit Tax (PPT) in Nigeria is Transfer Pricing. The PPTA includes provisions for transfer pricing regulations, which aim to ensure that transactions between related parties are conducted at arm's length prices. This helps prevent tax avoidance and ensures that appropriate taxable profits are attributed to Nigeria. The Petroleum Profits Tax Act (PPTA) in Nigeria includes provisions for transfer pricing regulations and compliance requirements. This feature there is transfer pricing where the PPTA incorporates transfer pricing regulations to ensure that transactions between related parties, such as affiliates or subsidiaries, are conducted at arm's length prices. The purpose of these regulations is to prevent tax avoidance by ensuring that appropriate taxable profits are attributed to Nigeria. Transfer pricing rules require mat related party transactions be priced in a manner consistent with what would be agreed upon between unrelated parties under similar circumstances.

There are also compliance requirements where the PPTA outlines various compliance requirements that petroleum companies must adhere to. These requirements typically include: Filing Tax Returns: Petroleum companies are obligated to file tax returns, providing accurate information about their income, deductions, and related transactions. The tax returns must be filed within the specified timelines.

Petroleum Profit Tax Act (PPTA)

The PPTA is the principal legislation which governs the taxation of companies engaged in petroleum operations in Nigeria. All companies engaged in petroleum operations are subject to tax under the PPTA. The PPTA imposes tax upon the profits from the wining of petroleum in Nigeria, provides for the assessment and collection of PPT in Nigeria. The Law took effect from 1st January. 1958 and has had several amendments. Government came up with a consolidated version of the PPT as Cap PI 3 of the Laws of the Federation of Nigerian 2004 as amended.

Petroleum Profit Tax (Amendment) Bill 2005 (PPT Bill 2005) forms part of the government tax reforms but is yet to be passed into law. Their income is liable to tax at 85% (subject to incentives contained in the MOU (as relevant), or 65.75% within the first live years of operating during which they are recovering their capitalized pre-production expenditure.

This Act was enacted in 1958 when the activities in the petroleum industry began to increase and

²⁸ FAGBOHUN O. The Law of Oil Pollution and Environmental Restoration, Odade Publishers, Lagos, 2010



the government then under the colonial administration saw the need to tax petroleum activities differently from companies engaged in other enterprises. Taxation or tax as usually understood, is the compulsory levy on a person's or a subject's property (including income) by an appropriate the governmental authority.²⁹ This understanding of the nature of a tax does not differ much from its legal definition or meaning. See Black's Law Dictionary 7th Edition in which taxation is defined as "a monetary charge imposed by the government on persons, entities or property to yield public revenue". Taxation in its broader sense includes governmental impositions like duties, excises, levies and rates. The sources from which incomes are derived under the Petroleum Profit Tax Act as follows;

- a). Direct Tax: on the Profits of the Oil Company, This is levied in accordance with the provisions: the PPT A
- b). Signature Bonuses: Paid upon grants of Oil Prospecting Licences. Production Sharing and Service Agreements as well as marginal fields allocation.
- c). Fees: These include those charged and paid in connection with the application, grant, assignment, etc. in respect of the following:
 - i. Oil Exploration and Oil Prospecting Licences;
 - ii. Oil Mining Leases;
 - iii. Permits to Survey the route of proposed oil pipelines;
 - iv. Oil Pipeline Licences;
 - v. Production Sharing and Service Agreements,
 - vi. Marginal fields allocations.
- d) Rents: In respect of concessions and grants made to oil companies under the Petroleum Act.³⁰
- e) Premiums: Paid (if not waived) in respect of approved assignments of Oil Prospecting Licences and Oil Mining Leases or of interest therein.³¹
- f) Revenue from Royalties: Paid on crude oil, casinghead petroleum spirit and gas produced from on-shore and off-shore concessions.
- g) Payments: made under the provisions of the Oil Terminal Dues Act.³²
- h) Bank Charges or Commissions: Paid to the Central Bank of Nigeria in connection with petroleum profits tax, royalties and concession rentals.

In ascertaining a company's profit in a fiscal year under the PPTA, the computation must be done within 12 calendar months beginning on 1st January and terminating on 31st December of the same year.³³ Be this as it may, the first taxable period of a company could be shorter than one year, commencing from the date it makes its first bulk sale of chargeable oil or liquefied natural gas.³⁴ It means therefore, that a company whose first bulk sale was effected after 1st January, its

²⁹ OLISA M. M. (2003) Nigerian Petroleum Law and Practice (2nd edition) Jonia Ventures Limited Lagos

³⁰ CAP P10 LFN, 2010

³¹ Paragraph 15 of the 1st schedule to the petroleum Act

³² Cap T16, LFN, 2010

³³ ETIKERENTSE G. Petroleum Law in Nigeria, Lagos 2005

³⁴ Ibid



accounting period would commence from the date of such first bulk sale and end on 31st December of the same year of such first bulk sale. In the illustrative case where the accounting period covered is less than twelve months, such period would be regarded under the law as the accounting period of such a company. However, such a company's accounting period thereafter must match the statutory twelve months' period of 1st January to 31st December.³⁵

For a company that ceases its petroleum operations before the end of the year (December) its accounting period is adjudged to terminate on the date of such cessation. It should be noted here that such operative date is the date of the cessation of its operations and not the date of its last bulk sale of chargeable oil or gas.³⁶ Should the effective date of the cessation of petroleum operations as regards the determination of an accounting period be in dispute, the decision of the Director of the Department of Petroleum Resources in the matter would be final.³⁷ In this connection, the submission is made that the issues involved are those of fact and that not much difficulty would be encountered in leading evidence that would satisfactorily establish such dates. As regards the accounting period of a "reconstituted company" that is to say, a company, which is incorporated locally to carry on the petroleum operation of a foreign company, which had such business in Nigeria, the provisions of section 16(2)(a)³⁸ would apply to it. As earlier pointed out, the principle applied in the determination of the actual taxable profits of a company engaged in petroleum operations is the same as with other companies namely, that certain items of expenditure are permitted to be deducted from the company's gross profits. The general guide for identifying an expense or outgoing which qualifies for such allowable deduction is to ascertain if it meets the criteria that it is wholly and exclusively incurred during the subject accounting period for the direct purposes of the petroleum operations, that is to say, in directly generating the income to be taxed. Such expenditure must also have been a necessary one. It is immaterial that the expenditure was incurred outside Nigeria.³⁹

The deductible expenses are enumerated under section 10(1) (a)-(e) of the Petroleum Profit Tax Act. Every company engaged in petroleum operations is required by section 28⁴⁰ to "make up accounts of its profits and losses arising from those operations," for each accounting period. Under section 31(1),⁴¹ it is stipulated that not later than two months after the commencement of each accounting period of a company, the company shall deliver to the federal Inland Revenue Service (in the form prescribed by the FIRS) the company's estimated tax for the period. Section 5(1)⁴² authorizes the FIRS to make assessments of the tax (in the form and manner provided by it) of a company for its accounting period based on the amount of chargeable profits, assessable tax and

³⁵ OMOROGBE Y. (2001) Oil and Gas law in Nigeria, Malthouse Publication, Lagos.

³⁶ OLISA M.M (2003) Nigerian Petroleum Law and Practice, Jona Ventures Limited Lagos

³⁷ ETIKERENTSE G. Petroleum Law in Nigeria, Lagos 2005 Petroleum Profit Tax Act, CAP P13, LFN, 2010

³⁸ Petroleum Profit Tax Act, CAP P13, LFN 2010

³⁹ ETIKERENTSE G. Petroleum Law in Nigeria, Lagos 2005

⁴⁰ Petroleum Profit Tax Act, CAP P13, LFN, 2010

⁴¹ Ibid

⁴² Ibid



chargeable tax. None of the foregoing provisions or in any other provisions of the PPTA is the currency in which the account estimates, returns or computations are to be made. stipulated.⁴³ However, arising from certain problems associated with currency gains and losses experienced by the Federal Government and the oil companies in the fulfillment of the oil companies' financial obligation, an agreement was finally executed in 1992⁴⁴ that these computations, estimates and returns be made in U. S. dollar currency, since this currency matures prominently and generally in most transactions in the industry.

One of the problems associated with the efficient implementations of the PPTA is that section 10 (1) (a)-(i)⁴⁵ provides a very long list of deductible expenses while ascertaining the company's profit for the purposes of computation of the Petroleum Profit Tax due to the company under the Act. It was observed that by the time the company had completed its deductible expenses as outlined in the section mentioned above, there might be little or nothing that is taxable from the company's profit. So, at the end of the day the amount a company may remit to the Federal Government through FIRS might just be something little in comparison with the company's turnover after all the deductions.

Cooking of company's audited account is one of the major problems of taxations generally in Nigeria. Before any company can be assessed for the purposes of taxation, such a company must submit its audited account in a financial year (January-December). It is the audited accounts submitted by the companies that guides the tax authorities in the assessment of chargeable taxes due to the company. Under the PPTA particularly section 9⁴⁶ thereof, which is to the effect that company engaged in petroleum operation must submit its audited accounts showing its profits and losses to the FIRS to enable them assess chargeable taxes due to the company. The simple interpretation of this provision is that whatever is submitted to the FIRS by the company is presumed to be correct. So, for the purpose of taxation under the PPTA there is presumption of regularities in the audited accounts as presented by the companies and the FIRS not being an edited form may not deem it fit to re-audit the already presumed audited accounts submitted to them but rather merely assess the chargeable taxes due to the company from the information they have before them whether or not the information contained therein is true or false.

Conclusion

The PPTA understandably did not specify the currency in which the petroleum profit tax should be paid but ordinarily the tax being a Nigerian statute it is expected that the currency should be in Naira. However, the practice is that the assessment of the profit tax for companies engaged in petroleum operations is done in US Dollars on the possible reason that most of the companies engaged in petroleum operations in the upstream sector of the petroleum industry are foreign companies mostly referred to as International Oil Companies (IOCs). The originators of this

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid



practice did not however avert their minds to the deductible expenses which are usually done in Naira. Because it is believed that some of the items under the deductible expenses are local transactions of which such transactions are paid for in Naira. For example, rents, customs and excise duties, tenement rates and any other tax other than the tax imposed by this Act are all remitted in Naira.

The penalty prescribed under sections 51-55 of the PPTA are so insignificant in the modern-day Nigeria to a company engaged in petroleum operations. Although these sanctions as at the time of promulgation of this Act⁴⁷ in 1958 might have been a weighty sanction on the defaulters but with the passage of time these amounts mentioned in the Act are nothing to go by these days. So, the need to review these sanctions is pertinent to the enforcement of this Act.

Tax Payments: Petroleum companies must make timely tax payments based on their tax liability. The PPTA specifies the due dates for tax payments, which are generally determined by the company's accounting period.

Record Keeping: Petroleum companies are required to maintain proper records and documentation to support their tax filings. These records should accurately reflect the financial transactions, expenses, revenues, and other relevant information.⁴⁸ **Compliance and Penalties:** Failure to comply with the compliance requirements outlined in the PPTA may result in penalties, interest charges, or other enforcement actions by the tax authorities. The specific penalties and consequences for non-compliance may vary depending on the nature and severity of the non-compliance.

⁴⁷ Petroleum Profit Tax Act, CAP P13, LFN, 2010

⁴⁸ ETIKERENTSE G. Petroleum Law in Nigeria, Lagos, 2005.