



**NIGERIA - SAO TOME AND PRINCIPE**

**JOINT DEVELOPMENT AUTHORITY**

**TAX REGULATIONS 2003**



**WHEREAS** the Treaty of 21 February 2001 between the Federal Republic of Nigeria and the Democratic Republic of São Tomé e Príncipe provides for the Joint Development of an overlapping maritime area between their Exclusive Economic Zones

**WHEREAS** instruments of ratification of the said Treaty were exchanged on 16 January 2003;

**WHEREAS** by virtue of the Treaty a Joint Development Authority was established;

**WHEREAS** Articles 3 and 9 of the Treaty empower the Authority to amongst other things control and manage the development activities relating to the exploration for and exploitation of the resources in the zone,

**WHEREAS** in accordance with Article 21.1 and pursuant to its powers under the Treaty, the Authority has submitted to the Joint Ministerial Council two draft documents entitled "Petroleum Tax Regulations 2003" (being the present document) and the other entitled "Petroleum Regulations 2003", which documents, taken together, constitute the Regulatory and Tax Regimes for petroleum related activities within the Zone.

**WHEREAS** under Article 21.2 of the Treaty the Joint Ministerial Council is empowered to approve and adopt a Regulatory and Tax Regime as aforesaid.

**THE JOINT MINISTERIAL COUNCIL**, pursuant to Article 8.2 (b) of the said Treaty

**HEREBY APPROVES AND ADOPTS**

the afore mentioned documents, this 4<sup>th</sup> day of April 2003



**NIGERIA - SAO TOME AND PRINCIPE**  
**JOINT DEVELOPMENT ZONE**

**TAX REGULATIONS 2003**

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## PART 1 – PRELIMINARY

1. These Regulations may be cited as the Tax Regulations 2003. They provide for the taxation of the profits of companies engaged in Petroleum operations in the Joint Development Zone. Short title.
  
2. In these Regulations, unless the context otherwise requires - Interpretation.
  - “Accounting Period”** - in relation to a company engaged in petroleum operations, means –
    - (a) a period of one year commencing 1st January and ending on 31st December of the same year; or
    - (b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil under a programme of continuous production and sales, and ending on 31 December of the same year; or
    - (c) any period of less than a year commencing on 1st January and ending on the date, in the same year, the company ceases to be engaged in petroleum operations.

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

**“Adjusted profits”** means adjusted profit for the purpose of section 9 of these Regulations;

**“Assessable profits”** means assessable profit for the purpose of section 9 of these Regulations;

**“Assessable tax”** means assessable tax as ascertained under section 15 of these Regulations;

**“ Authority”** means the Joint Authority instituted by the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome e Principe, dated 21 February 2001,

**“Board”** means the Board of Directors of the Authority;

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

**“Chargeable natural gas”** means natural gas actually delivered by the company to the Authority under a Gas Sales Contract but does not include natural gas taken by or on behalf of the Authority in pursuance of these Regulations;

**“Chargeable oil”** means casinghead petroleum spirit and crude oil won or obtained by the company from petroleum operations;

**“Chargeable profits”** means chargeable profits for the purpose of section 9 of these Regulations

**“Company”** means any body incorporated under any law in force in a State Party or elsewhere;

**“Contract Area”** the area of the OPL or any OML derived therefrom;

**“Cost Oil”** means the quantum of available crude oil allocated to a Company or Contractor for recovery of costs as defined under the terms of each PSC.

**“Council”** means the Joint Ministerial Council established by the Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome e Principe, dated 21st February 2001;

**“Crude oil”** means liquid petroleum (including condensates), which has been treated but not refined, and excludes water and sediments;

**“Development Area”** means the extent of the whole area within the contract area capable of production from the deposit(s) identified in a commercial discovery and agreed upon by the JDA and the Contractor following such commercial discovery.

**“Disposal and disposed of”** in relation to chargeable oil owned by a company engaged in petroleum operations means respectively;

- (a) delivery, without sale, of oil to, and
- (b) oil delivered, without sale, to,

a refinery or to an adjacent storage tank for refining by the company;

**“Gazette”** means the official Gazettes of the State Parties;

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

- (a) determination of well locations, geological studies, geographical and topographical surveys preparatory to drilling;
- (b) drilling, shooting, testing and cleaning wells;
- (c) cleaning, draining and levelling land, road building and laying of foundations;
- (d) erection of rigs and tankage assembly and installation of pipelines and other plant and equipment required in the preparation or drilling of wells producing petroleum;

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

**“MMcf”** means one million cubic feet;

**“Natural gas”** means all gaseous hydrocarbons produced in association with crude oil or from reservoirs, which produce mainly gaseous hydrocarbon;

**“Oil mining lease”** means a lease of the type referred to in Regulation 8 of the JDZ Petroleum Regulations 2003;

**“Oil prospecting licence”** means a license of the type referred to in Regulation 7 of the JDZ Petroleum Regulations 2003;

**“Operator”** has the meaning given in the Petroleum Regulations 2003;

**“Person”** includes a company or any unincorporated body of persons;

**“Petroleum”** means any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in the Zone but does not include liquified natural gas, coal, bituminous shale or other stratified deposits from which oil can be extracted by destructive distillation;

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

**“Production Sharing Contract, (PSC)”** has the meaning given in the Petroleum Regulations 2003;

**“Resident in a State Party”**, in relation to a company, means a company with a registered head or business office in either State Party and the control and management of the business of which are exercised in that State;

**“Royalty”** means, the amount payable as Royalties to the JDA as defined in the Petroleum Regulations 2003 of the JDZ;

**“State Parties”** means the Federal Republic of Nigeria and the Democratic Republic of Sao Tome e Principe;

**“Tax”** means assessable tax.

**“The Treaty”** means the Treaty entered into between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome e Principe dated 21st February 2001;

**“The Zone”** means the area established as the Joint Development Zone under Article 2 of the Treaty.

### PART 11 – ADMINISTRATION

Powers and duties  
of the Authority. 3.

Subject to the provisions of these Regulations –

- (a) the due administration of these Regulations and the tax shall be under the care and management of the Authority, who may do all such acts as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected;
- (b) whenever the Authority considers it necessary with respect to any tax due, it may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or of any judgment debt due in respect of any tax and shall account for such property and any proceeds of sale thereof to the Authority;
- (c) the Authority may appoint any person to accept service of any document to be sent, served upon or delivered to it and represent it in any proceedings;
- (d) the Authority may direct that documents or information required to be provided, be supplied to another person so specified;
- (e) the Authority may empower any person to-
  - (i) perform or exercise its duties and powers except those specified in section 3 (b), (d) and (e), 6, 10.1.f, 11(2)(b) (iii), 13.1, 23, 24(1), 30 (1), 39, 42,43 and 46;
  - (ii) receive on behalf of the Authority any relevant document or notice under these Regulations;

- (f) the Authority shall not take any action that will defer the collection of any tax, penalty or judgement debt due or alter the normal course of any civil or criminal proceeding relating to any matter under these Regulations.
- (g) every claim, objection, appeal, representation or the like made by any person under any provision of these Regulations or of any subsidiary legislation shall be made in accordance with such Regulations and Legislation.

4. In order to enforce the duties under section 3(b), the Authority may apply to court or the law enforcement agency of either State to carry out any action as may be deemed necessary for the recovery of any tax due.

Enforcement powers of the Authority.

5. (1) Any person entrusted with the administration of these Regulations shall treat all documents and information as secret and confidential and shall not divulge any information obtained or contained in any document, except under the following circumstances:

Official Secrecy, etc.

(a) the information or document is required to institute a prosecution or in a prosecution of an offence relating to tax, money laundering, arms and drug trafficking or terrorism; or

(a) the information is required to grant a relief or exemption from income tax or similar taxes under a law in force in a territory outside the Zone.

(2) This section shall not preclude the Authority from granting access to any record or document to its internal and external auditors for the performance of their duties.

(3) Any person who does not adhere to the provisions of this section will be guilty of an offence.

6. The Authority may, from time to time, make rules generally for the carrying out of the provisions of these Regulations and specify the form of returns, claims, statements and notice under these Regulations.

Rules and Form

Service and signature of notice.

(1) Any notice shall be deemed to have been duly served if left at the appropriate address as determined under subsection 2 of this section.

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

(a) in the case of a company incorporated in one of the State Parties, to the registered office of the company;

- (b) in the case of a company incorporated outside the State Parties, to its business address registered with the Authority in accordance with section 17 of these Regulations; and
- (3) A notice addressed in accordance with subsection (2) of this section shall be deemed to have been received on the date succeeding the date the addressee of the letter would have been normally informed that such letter is awaiting him at the post office, except where the addressee proves that no notification of the letter came to his attention from either the post office or a third party.

**PART 111 - IMPOSITION OF TAX AND ASCERTAINMENT OF CHARGEABLE PROFITS**

- |   |    |   |
|---|----|---|
| Charge to tax.  | 8. | <ul style="list-style-type: none"> <li>(1) Tax shall be assessed, charged and payable in any accounting period based on the chargeable profits of a company engaged in petroleum operations, in accordance with the provisions of these Regulations.</li> <li>(2) For the purpose of sub section (1) of this section, each contract area shall be treated as separate and independent of any other.</li> <li>(3) Tax shall be ascertained and payable in dollars of the United States of America or in kind of the same value, at the option of the Authority. The Authority shall approve from time to time currency exchange table for the purpose of ascertaining the amount of tax due.</li> </ul>  |
| Ascertainment of profits, adjusted profits, assessable profits and chargeable profits | 9. | <ul style="list-style-type: none"> <li>(1) Subject to any express provisions of these Regulations, in relation to any accounting period, the profits of that period of a company shall be taken to be aggregate of –               <ul style="list-style-type: none"> <li>(a) the proceeds of sale of all chargeable oil sold by the company in that period;</li> <li>(b) the value of all chargeable oil disposed of by the company in that period ; and</li> <li>(c) all income of the company of that period incidental to and arising from one or more of its petroleum operations.</li> </ul> </li> <li>(2) For the purpose of subsection (1)(b) of this section, the value of any chargeable oil so disposed of shall be the aggregate of -               <ul style="list-style-type: none"> <li>(a) value of oil determined for the purpose of royalty, in accordance with the provisions of any applicable regulations</li> </ul> </li> </ul> |

and any financial agreement or arrangement between the Authority and the company; and

- (b) any cost incurred in extracting, transporting and storing the oil between the field of production and place of disposal.
- (3) The adjusted profits of an accounting period shall be the profits of that period after the deductions allowed by section 10 of these regulations and any adjustments made under section 12 of these Regulations.
- (4) The assessable profits of an accounting period shall be the adjusted profits of that period after any deduction of any loss incurred by that company during any previous accounting period. Any loss not recovered in that accounting period may be recovered in succeeding accounting periods.
- (5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deductions allowed by section 14 of these Regulations.

**10.** (1) In computing the adjusted profits of any company of any accounting period from its petroleum operations, there shall be, Deductions.  
deducted all outgoing expenses wholly, exclusively and necessarily incurred during the period for the purpose of its operations including but without otherwise expanding or limiting the generality of the foregoing -

- (a) any rents incurred in respect of land or buildings occupied for petroleum operations;
- (b) interest on any loan, obtained under terms prevailing in the open market;
- (c) any expenses incurred for repairs of premises, plant, machinery, or fixtures employed for the purpose of carrying petroleum operations or for renewal, repairs, or alteration of any implements, utensils or articles so employed;
- (d) bad and/or doubtful debts, notwithstanding that such debts were due and payable prior to the commencement of that period:

Provided that -

- (i) the amount of deduction does not exceed the portion of debt which is proved to have become doubtful during that accounting period;

- (ii) any amount recovered in respect of bad debts previously deducted shall be treated as income for that period;
- (iii) the company proves that the debtor has been declared bankrupt or insolvent by an appropriate court; and
- (iv) it is proved to the satisfaction of the Authority that the debts in respect of which a deduction is claimed were either –
  - (a) included as a profit from the carrying on of petroleum operations in the accounting period in which they were incurred; or
  - (b) advances made in the normal course of carrying on of petroleum operations not being advances on account of any item falling within the provisions of section 11 of these Regulations;
- (e) (i) any other expenditure, including intangible drilling costs directly incurred in the drilling and appraisal of development wells, but excluding expenditure which is qualifying expenditure for the purpose of the First Schedule; and
- (ii) any expenditure directly incurred in connection with drilling of an exploratory well and the next two appraisal wells in a particular development area whether productive or not;
- (iii) any deduction given under this section in respect of any expenditure shall not be treated as qualifying drilling expenditure for the purpose of the First Schedule;
- (f) any contribution to a pension, provident, or other society, scheme or fund approved, with or without retrospective effect, by the Authority subject to such general or specific conditions as the Authority may prescribe:

Provided that any amount or value of any benefit received by such company, from any approved scheme or fund, in any accounting period shall, be treated as income for that period under subsection (1)(c) of section 9 of these Regulations;

- (g) all sums payable to the Authority as fees, duty, stamp duties, tax (other than Royalty, area rentals imposed by the Petroleum Regulations and the tax imposed by these Regulations) or any other rate or like charges;



(h) such other costs as may be prescribed by any rule made under these Regulations.

(2) Where a liability in respect of which a deduction has been allowed under this section is waived or released, the amount waived, released or the part thereof shall be treated as income under subsection (1)(c) of section 9 for the accounting period in which the waiver or release was granted.

11. Subject to the express provisions of these Regulations, no deduction shall be allowed in respect of -

Deductions not allowed

- (a) any disbursement or expenses not being wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred, for the purpose of those operations;
- (b) any capital withdrawn or any sum employed or intended to be employed as capital;
- (c) any capital employed in improvement as distinct from repairs;
- (d) any sum recoverable under any insurance or contract of indemnity;
- (e) any rent or cost of repair to any premises or part of any premises not incurred for the purpose of those operations;
- (f) any amount incurred in respect of any income tax, profit tax, or similar taxes whether charged within the Zone or elsewhere;
- (g) the depreciation of any premises, buildings, structures, work of a permanent nature, plant, machinery or fixtures;
- (h) any payment to any provident, savings, widows, orphans or other society, scheme or fund except those allowed under subsection (1)(f) of section 10 of these Regulations;
- (i) any expenditure for the purchase of information relating to the existence of petroleum deposits;
- (j) any expense incurred due to negligence or lack of diligence of the company or its representatives, officers, agents or employees;
- (k) any expense incurred in respect of payment of penalties, fines or indemnifications arising from breach of any legal or contractual obligation;
- (l) any of the following expenses, except if and to the extent authorized by the Authority to qualify for the purpose:

- (i) expenses with social events and any offer or donation for a social, educational, cultural or scientific purpose.
- (ii) expenses incurred prior to the execution of the development contract.
- (iii) administrative and other general expenses incurred by a non-operator in setting-up, keeping and running its business or representative offices in either the Zone or the State Parties, pursuant to the terms and conditions to be generally regulated by the Authority.
- (m) cost-share of administrative and other general costs borne by the head-office, parent company or subsidiary of a non operator.
- (n) any representation cost or expenses to the extent that it is considered excessive by the Authority.

Exclusion of certain profit.

- 12.** Where a company involved in petroleum operations is engaged in the transportation of chargeable oil by ocean going oil tankers operated by or on behalf of the company from the Zone or State Party to another territory, any profit or a loss as attributable to such transportation shall be excluded in the computation of chargeable profit or loss of that company.

Artificial Transactions.

- 13.** (1) Where the Authority is of the opinion that any disposition is not in fact given effect to or that a transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Authority may disregard any such disposition or direct that necessary adjustments be made to counteract the effect of a reduction in tax. In this subsection, the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.
- (2) For the purpose of this section, the Authority shall deem artificial or fictitious, transactions between persons one of whom has control over the other or between persons both of whom are controlled by some other person, which have not been made under prevailing commercial or market terms.
- (3) Nothing in this section shall prevent the decision of the Authority in the exercise of any discretion by this section from being appealed against, in accordance with Part VIII of these Regulations.

- 14.** (1) Any company engaged in petroleum operations shall deduct any amount allowed in accordance with the provisions of this section.

Capital allowances.

First Schedule.

- (2) There shall be computed for each accounting period the aggregate annual allowance due to the company under the provisions of the First Schedule.
- (3) Where in any accounting period the total amount computed under subsection (2) of this section cannot be deducted due to insufficient profits, the amount outstanding shall be aggregated with that computed for the following accounting period and shall qualify as an allowance due to the company under the provisions of the First Schedule to these Regulations for that following accounting period.

#### **PART IV- ASCERTAINMENT OF ASSESSABLE TAX**

15. The assessable tax of a company for any accounting period shall be fifty percent of its chargeable profits for that period.

Assessable Tax.

16. (1) Where the amount of assessable tax for any accounting period calculated under these Regulations is less than the amount computed based on subsection (2) of this section, the company shall be liable to additional tax on the difference between the two amounts. Such additional tax shall be paid together with the final installment of assessable tax for the period.

Additional tax payable in certain circumstances.

(2) The amount referred to under subsection (1) of this section, is the assessable tax computed for that period in accordance with the provisions of these Regulations, by multiplying the number of barrels of chargeable oil sold or exported from the Zone by the relevant sum per barrel.

(3) The relevant sum per barrel for the purpose of subsection (2) of this section is the posted price applicable to that crude oil reduced by such allowances (if any) as may from time to time be agreed in writing between the Authority and the company.

(4) In this section, "posted price," means the price f.o.b. at the port of export of that crude oil, which is from time to time established by the company based on procedures agreed with the Authority.

(5) Every posted price established as aforesaid must be reasonable and consistent with -

(a) the established posted prices of crude oils of the State Parties of comparable quality and gravity (if any); or

(b) if there are no such established posted prices for such in either of the State Parties, the posted prices at main international

trading export centers for crude oil of similar grade shall apply

and taking into consideration freight differential and all other relevant factors.

- (6) References in this section to crude oil include references to casinghead petroleum spirit, which has been injected into crude oil
- (7) Where a company undertakes the sale or exportation of chargeable oil from the Zone or in either State Parties on behalf of a particular company, the former shall, for the purpose of this section, be deemed to have sold or exported the oil.

#### PART V - PERSONS CHARGEABLE

Registration.

17. (1) Any company that engages in petroleum operations in the Zone shall register with the Authority prior to the start of its activity.

- (2) The Authority may issue specific rules and guidelines to govern the requirements and procedures for such registration.

Non-resident companies.

- (3) Where a company engaging in petroleum operations within the Zone, is not resident in either State Parties, it shall register a business address, not being post office box number in either of the State Parties, and shall appoint and register with the Authority representatives, who shall be resident in either State Parties, for all tax effects and purposes.

- (4) Any person acting as a tax representative of a non-resident company in either State Parties shall be answerable for -

(a) all requirements under these Regulations for the assessment of tax of the relevant company; and

(b) any tax assessed and charged in the name of the company

18. The manager or principal officer in the Zone or either State Parties of any company, which is or has engaged in petroleum operations shall be answerable for doing all such acts as are required to be done by these Regulations.

Manager of companies, etc. to be answerable.

19. (1) Where a company is being wound up and a receiver or a liquidator has been appointed, the company may be assessed and charged to tax in the name of such receiver or liquidator or any agent in the Zone or either State Parties for any accounting period before, during or after the date of appointment of the receiver or liquidator.

Company wound up.

- (2) Any such receiver, liquidator or agent shall be answerable for doing all such acts are required to be done by virtue of these Regulations.
- (3) Such receiver or liquidator shall not distribute the assets of the company to the shareholders or debenture holders thereof until full provision has been made in respect of any outstanding tax

20. Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any tax assessed or charged upon the company for an accounting period ending prior to such transfer, which in the opinion of the Authority was a deliberate attempt to evade the tax charged, the tax may be sued for and recovered from such a person in a manner similar to that under section 37 of these Regulations subject to any modifications to that section.

Avoidance by Transfer.

21. Every person answerable under these Regulations for the payment of tax on behalf of a company may deduct from any money received on behalf of the company or within his de-facto control, any amount sufficient to pay such tax and shall be indemnified against any person whatsoever for such tax paid by him in accordance with the provision of these Regulations.

Indemnification of representative.

#### PART VI - ACCOUNTS AND PARTICULARS

22. (1) Every company which is or has been engaged in petroleum operations shall, for each accounting period of the company, make up accounts of its profits or losses, arising from those operations, of that period and shall prepare the following particulars -
- (a) computation of its estimated adjusted profit or loss and estimated assessable profit of that period;
  - (b) in connection with the First Schedule to these Regulations, a schedule showing -
    - (i) the residues of its assets at the end of that period;
    - (ii) all qualifying petroleum expenditure incurred by it in that period;
    - (iii) the values of any of its asset (estimated by references to the provisions of that Schedule) disposed of in that period; and
    - (iv) the allowances due to it under that Schedule for that period;

Preparation and delivery of accounts and particulars.

- (c) a computation of its estimated chargeable profits of that period;
  - (d) a statement of other sums, deductible under section 10 of these Regulations, the liabilities for which were incurred during that period,
  - (e) a computation of its estimated tax for the period; and
  - (f) duly signed audited accounts for the period.
- (2) The particulars and accounts referred to in subsection (1) of this section shall be submitted to the Authority within five months from the end of each accounting period.

Each copy of the particulars submitted shall contain a declaration from an authorized officer of the company or its liquidator, receiver or their agent, as to the truth and completeness of the information provided or a declaration that they were made to his best of judgment, where such copies are estimates.

Authority may call for further information.

- 23.** The Authority may give notice in writing to any company as often as it may seem necessary to furnish within such reasonable time, further information as may be specified by such notice on any matters referred to under section 22 of these Regulations or matters which the Authority considers necessary for the purpose of these Regulations.

Power to call for returns, books, etc.

- 24.** (1) In order to ascertain the profits of a company's petroleum operations, the Authority may call for information/documents or require a representative of the company to appear before it for the examination of any such document /information within twenty-one days from the service of a notice to the company or at a date so specified on such notice (not being a period less than twenty-one days from the date of service of the notice).
- (2) Where any company fails or refuses to keep books or accounts which, in the opinion of the Authority, are adequate for the purpose of ascertaining the tax, the Authority may by notice in writing require it to keep such records, books and accounts and in such form and language as the Authority may deem fit and, subject to the provisions of subsections (3) and (4) of this section, the company shall keep records, books and accounts as directed.
- (3) Where a company has not kept or did not provide the Authority with the relevant support documents in its original form, in evidence of an accounted transaction, the Authority may disregard the tax effect of such transaction.

(4) The Authority may, at anytime, conduct an inspection of the accounts, books and documents of the company for the purpose of verifying genuineness of the transactions.

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

Returns  
estimate

(2) The company can revise the returns already submitted as and when deemed necessary during the particular accounting period.

26. Where it is shown to the satisfaction of the Authority that for some good reason, the company is unable to comply with the time specified under section 22 or any notice given under sections 23 or 24 of these Regulations, the Authority may grant in writing such extension of time as it may consider necessary.

Extensio  
periods  
making

#### PART VII – ASSESSMENT

27. (1) Where a company has delivered its account and particulars for any accounting period, the Authority may -

Authori  
assessm

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

(b) refuse to accept the same and proceed as provided in subsection (2) of this section.

(2) Where, a company fails to comply with provisions of sections 22, 23, 24 or 26 of these Regulations, and in the opinion of the Authority that company is liable to pay tax, the Authority may estimate the amount of the tax payable by such company for that accounting period and make an assessment accordingly.

Such assessment shall not affect any liability otherwise incurred by such company by reason of its failure to comply with the provisions of sections 22, 23 and 24 and nothing in this subsection shall affect the right of the Authority to make any additional assessment under the provisions of section 28 of these Regulations.

Additional  
Assessments.

28. (1) If the Authority discovers or is of the opinion that there has been an underpayment of tax, in an accounting period, it may within six years from the end of that accounting period assess the company to any additional tax as it may deem fit.

- (2) The provisions of these Regulations relating to notice of assessment, objection and appeal shall apply to any additional assessment raised under subsection (1).
- (3) In order to determine the additional tax under subsection (1), all facts, even not known at the time of the initial/additional assessment, shall be taken into consideration.

Making of Assessments.

- 29.
- (1) Assessments of tax shall be made in such form and in such manner as the Authority shall authorise.
  - (2) When any assessment requires to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) of this section but showing the amended or revised amount of the chargeable profits and assessable tax.
  - (3) A copy of each assessment, and of each amended or revised assessment, shall be filed in a list, which shall constitute the assessment list for the purpose of these Regulations.

Notices of Assessments.

- 30.
- (1) The Authority shall cause to be served personally on or sent by registered post to each person whose name appears on an assessment in the Assessment list, a notice of assessment showing its accounting period, the amount of chargeable profits, assessable tax, the place at which payment of tax should be made, and the rights of the company under subsection (2) of this section.
  - (2) If a company disputes the assessment, the company may object in writing to the assessment within twenty-one days from the date of service of the notice of assessment and shall state, the amount of chargeable profits, assessable tax and the undisputed tax for the accounting period in respect of which the assessment was issued.
  - (3) The Authority upon being satisfied by the reasons given by the company for its inability to meet the twenty one-day deadline, may extend the period as may be reasonable in the circumstances.
  - (4) After receipt of a notice of objection referred to in subsection (2), the Authority may request additional information or documents to be delivered at a specified place and time or may request oral (under oath) or written (by an affidavit) evidence in respect of any matter required to ascertain the tax payable at that time and place so specified.
  - (5) In the event of the applicant agreeing with the Authority as to the amount of tax due, the assessment shall be amended accordingly and a notice of the tax payable shall be served upon the company



(6) Where the applicant fails to agree with the Authority on the amount of tax due, the Authority may revise the assessment to an amount it deems fit and shall give the applicant a notice of refusal to amend the assessment as desired by the applicant together with a notice of the revised assessment and tax payable. Any reference to an assessment or additional assessment shall be deemed where appropriate to be an assessment or additional assessment as revised under the provisions of this section.

31. (1) No assessment, warrant or other proceedings purporting to be made in accordance with the provisions of these Regulations shall be quashed, invalidated or voided, for want of form, or by reason of a mistake, defect or omission therein, if it is in substance and effect in conformity with or according to the intent and meaning of these Regulations or any amendment thereto, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

Errors and def  
in assessments  
and notices.

(2) An assessment shall not be invalidated or affected -

(a) by reason of a mistake therein as to -

(i) the name of the company liable or of a person in whose name a company is assessed, or

(ii) the amount of the tax;

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

## PART VIII – APPEALS

32. (1) Any company or any of its representatives, who has failed to agree with the Authority as referred to in section 30(6) of these Regulations, may appeal against the assessment to the appropriate Appeal Commissioners by giving notice in writing to the Authority and to the secretary to such Commissioners within thirty days after the date of service upon him of notice of the refusal of the Authority to amend the assessment as desired:

Appeals to  
Appeal  
Commission

(2) The Body of Appeal Commissioners shall decide on the majority of the votes and will be constituted by three members, one appointed by the Authority and one each appointed by the State Parties.

- (3) A representative of the applicant, named in the notice referred to in subsection (i) of this section, may attend the meetings of the Body of Appeal Commissioners.
- (4) A notice of appeal against an assessment, to be given under subsection (1) of this section, shall specify the following particulars -
  - (a) the official number of the assessment and the accounting period for which it was made;
  - (b) the amount of tax charged by the assessment;
  - (c) the date upon which the appellant was served with notice of refusal of the Authority to amend the assessment as desired;
  - (d) the precise ground of the appeal against the assessment;
  - (e) an address for service of any notice, precepts or other documents to be given, by the secretary to the appropriate Appeal Commissioners, to the appellant.
  - (f) the name and address of the representative of the appellant in pursuant to subsection 2 of this section.
- (5) Any assessment in dispute shall be in abeyance until the resolution of the dispute by the Appeal Commissioners.
- (6) Appeal Commissioners shall adjudicate a final and conclusive decision on the profits, charges, costs and losses as well as on the amount of tax to be paid by the appellant.
- (7) The Joint Ministerial Council may make rules prescribing the procedure to be followed by the Appeal Commissioners in the conduct of appeals before them.

Appeals to Tax  
Arbitration  
Tribunal.

33. (1) Where a company or any of its tax representative after making an appeal, as provided under section 32 of these Regulations, is still not satisfied with the decision of Appeal Commissioners, it may further appeal to the Tax Arbitration Tribunal by giving notice in writing to the Authority within thirty days after the date upon which such decision was given.
- (2) The Tax Arbitration Tribunal may only hear appeals grounded on any legal procedural matters and not on any assessment or tax due which, under section 32, are under the exclusive authority of the Appeal Commissioners.

- (3) The Tax Arbitration Tribunal will be competent to settle disputes of the kind provided for in subsection 2 of this section and the following rules shall apply:
  - (a) the Tribunal shall be composed of three arbitrators, one appointed by the Authority, one appointed by the appellant and the third one shall be selected by the two appointed arbitrators;
  - (b) the appellant must appoint its arbitrator in the notice referred to under subsection (1) of this section and where no such appointment is made, the Authority shall not consider the notice;
  - (c) the Authority shall appoint its arbitrator and shall inform the applicant of such appointment in writing within 15 days from receipt of the notice from the applicant;
  - (d) where the Authority fails to appoint an arbitrator as provided for under subsection 3(iii), the applicant can apply to either the Chief Justice of the Federal Republic of Nigeria or the President of the Tribunal Supremo (Supreme Court) of the Democratic Republic of Sao Tome e Principe, (depending on the State Party in which the applicant is resident) to appoint the arbitrator on behalf of the Authority;
  - (e) where the first two Arbitrators appointed, as provided for under this subsection, fail to appoint the third Arbitrator within 15 days from the appointment of the last of the two arbitrators, then the Authority or the applicant shall adopt the same course of action as provided under subsection 3(iii) of this section;
  - (f) the third arbitrator shall be the President of the Tribunal.
- (4) The burden of proof shall lie with the appellant.
- (5) The cost of appeal shall be at the discretion of the Tribunal.
- (6) The appeal shall in no way prevent the appellant from paying the tax due as established by the Appeal Commissioners.
- (7) The Tax Arbitration Tribunal shall make its decision based on majority votes
- (8) The Joint Ministerial Council may make rules that should be followed in the Tax Arbitration Tribunal. In the absence of such rules, the Tax Arbitration Tribunal will establish the rules using the UNCITRAL Rules as a reference.

Assessment to  
be final and  
conclusive.

34. (1) An assessment would be deemed final and conclusive where;
- (a) no valid objection or appeal against an assessment has been lodged as provided under sections 30, 32 and 33 of these Regulations; or
  - (b) the amount of tax has been agreed to or determined on objection/ revision as provided under sections 30(5) and 30(6) respectively; or
  - (c) the amount of tax has been determined on appeal, and an assessment has been determined as provided under section 32 of these Regulations.

If an assessment, which is final and conclusive, is not paid within the period so specified under these Regulations, the provisions relating to the recovery of tax and penalty shall apply subject only to the set-off of the amount of any tax repayable under any claim made under any Provisions of these Regulations, which has been agreed to by the Authority or determined on appeal.

- (2) Where an assessment has become final and conclusive, any tax overpaid shall be refunded.
- (3) Nothing in section 30 of these Regulations or in this Part shall prevent the Authority from making any assessment or additional assessment to tax for any accounting period as provided under subsection (5) or (6) of section 30 of these Regulations by agreement or otherwise or on appeal provided it does not involve reopening any issue on the same facts which has been determined for that accounting period.

#### **PART IX - COLLECTION, RECOVERY AND THE PAYMENT OF TAX**

Time within which payment is to be made.

35. (1) The Tax for any accounting period shall be payable in equal monthly installments together with a final installment as provided in subsection (4) of this section.
- (2) Each installment shall be an amount equal to one-twelfth or where the accounting period is less than one year the monthly proportion of the tax chargeable for the accounting period. The first installment shall be payable not later than the third month of the accounting period.
  - (3) Each of the other monthly payments shall be payable not later than the last day of the month in question and shall be equal to the monthly proportion of the assessable tax based on the latest tax return filed pursuant to Section 25 (2) of these Regulations less so much as has already been paid for that accounting period.

- (4) A final installment of tax shall be due and payable within twenty-one days after the service of the notice of assessment of tax for such accounting period, and shall be the amount of the tax assessed for that accounting period less so much thereof as has already been paid under subsections (2) and (3) of this section or is the subject of proceedings.
- (5) Any installments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purposes of these Regulations.

- 36.** (1) If any installment of tax due and payable pursuant to these Regulations is not paid within the appropriate time limit prescribed in these Regulations, the following shall apply;
- (a) a sum equal to five per cent of the amount of the installment of tax due and payable shall be added thereon, and the provisions of these Regulations relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
  - (b) the Authority shall serve a demand note upon the company assessed and its tax representatives, and if payment is not made within one month from the date of service of such demand notice, the Authority may proceed to enforce payment as hereinafter provided;
  - (c) a penalty imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of any of the provisions of these Regulations, other than those relating to enforcement and collection of any tax.
- (2) Any company or its tax representative who without lawful justification or excuse fails to pay the tax within the period of one month prescribed in subsection (1)(b) of this section shall be guilty of an offence.
- (3) The Authority may, for any good cause shown, remit the whole or part of the penalty due under subsection (1) of this section.

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

enforcement procedures.

- 37.** (1) The enforcement of any tax due and unduly unpaid shall be made in accordance with section 4 of these Regulations.
- (2) A certificate signed by a person authorized by the Authority, stating the particulars of the defendant and the amount of tax due by him, shall be sufficient evidence of the amount so due and sufficient authority for the court or other enforcement agents to give judgment for the said amount.

Relief in respect of error or mistake.

38. (1) If any person who has paid tax for any accounting period alleges that an assessment was excessive by reasons of some error or mistake in the accounts, particulars or other written information supplied by him, such person may, at any time, within six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Authority for relief.
- (2) On receiving of any such application, the Authority shall investigate the matter and shall grant such relief as it deems reasonable and just.
- (3) Where the mistake or error relates to the basis on which the accounts, particulars or information was prepared, no relief shall be granted if particulars or information were made in accordance with the practice of the Authority prevailing at that time.
- (4) In determining any application under this section, the Authority shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief will result in the exclusion from charge to tax of any part of the chargeable profits of the applicant, and in doing so take into consideration the liability of the applicant and assessments made upon him in respect of other years.
- (5) No appeal shall lie from a determination of the Authority under this section, which determination shall be final and conclusive.

Repayment of tax.

39. (1) Except expressly provided, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six year after the end of the accounting period to which it relates and if the Authority disputes any such claim it shall give a notice of refusal to admit the claim and the provisions of section 28 and 29 of these Regulations shall apply with any necessary modifications.
- (2) The Authority shall give a certificate of the amount of any tax to be repaid under any of the provision of these Regulations and upon the receipt of the certificate, the interested company or person shall be entitled to a refund.

#### PART X – OFFENCES AND PENALTIES

40. (1) Any person guilty of an offence against these Regulations or of any rule made thereunder for which no other penalty is specifically provided, shall be liable to a fine of Ten Thousand US Dollars and where such offence is one under section 25, or arising from failure to deliver accounts, particulars or information or to keep records

Penalty for offences.

required under Part VI of these Regulations, a further sum of Ten thousand US Dollars for each and every day during which such offence or failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

- (2) Any person who -
- (a) fails to comply with the requirements of notice served on him under these Regulations; or
  - (b) having a duty so to do, fails to comply with the provisions of section 22 of these Regulations; or
  - (c) without sufficient cause fails to attend in answer to a notice or summons served on him under these Regulations or having attended fails to answer any question lawfully put to him; or
  - (d) fails to submit any return required to be submitted by section 22 of these Regulations in accordance with that section and section 26 of these Regulations, shall be guilty of an offence.

shall be guilty of an offence.

- (3) Any offence in respect of which a penalty is provided by subsection (1) of this section shall be deemed to occur in Abuja and in the city of Sao Tome.

**41. (1) Any person who without reasonable excuse -**

- (a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses of which he is required by these Regulations to make up accounts; or
- (b) prepares or causes to be prepared any incorrect schedule required to be prepared by section 22 of these Regulations by overstating any expenditure, royalties or other sums or by omitting or understating any amount repaid, refunded, waived or released, or
- (c) gives or causes to be given any incorrect information in relation to any matter or thing affecting his liability to tax.

shall be guilty of an offence and shall be liable to a fine of One Thousand US Dollars and double the amount of tax which has been undercharged in consequence of such incorrect accounts, schedule, statement, or information, or would have been so

Penalty for making incorrect accounts, etc.

undercharged if the accounts, schedule, statement or information had been accepted as correct.

- (2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made at any time within six years after the end of the accounting period in respect of which the offence was committed.
- (3) The Authority may compound any offence under this section, and may before judgment stay or compound any proceedings thereunder.

False statements  
and returns.

42. (1) Any person who -

- (a) for the purpose of obtaining any deduction, rebate, reduction or repayment in respect of tax for himself or for any other person, or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation, or forges or fraudulently alters or uses, or fraudulently lends, or allows to be used by any other person any receipt or token evidencing payment of the tax under this Act; or
- (b) aids, abets, assists, counsels, incites or induces any other person -
  - (i) to make or deliver any false return or statement under this Act,
  - (ii) to keep or prepare any false account or particulars affecting tax, or
  - (iii) unlawfully to refuse or neglect to pay tax,

shall be guilty of an offence and shall be liable to a fine of One thousand US Dollars and triple the amount of tax for which the person assessable is liable under these Regulations for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months, or to both such fine and imprisonment.

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

43. (1) Any person who -

- (a) being a staff of the Authority charged with the due administration of these Regulations or any assistant employed in connection with the assessment and collection of the tax who -

Penalties for  
offences by  
authorised and  
unauthorised  
persons.



- (i) demands from any person an amount in excess of the authorised assessment of the tax payable;
- (ii) withholds for his own use or otherwise any portion of the amount of tax collected;
- (iii) renders a false return, whether verbal or in writing, of the amounts of the amounts of tax collected or received by him;
- (iii) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the Authority or any other individual; or
- (b) not being authorised under these Regulations to do so collects or attempts to collect the tax under these Regulations.

shall be guilty of an offence and be liable to a fine of Six hundred US Dollars or to imprisonment for three years or both.

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

Tax to be payable notwithstanding any proceedings for penalties.

45. No prosecution in respect of an offence under sections 5, 41, 42 or 43 of these Regulations may be commenced, except at the instance of or with the sanction of the Authority.

Prosecution to be with the sanction of the Authority.

46. The provisions of these Regulations shall not affect any criminal proceedings under any other Act or law in force in the Zone and/or in either of the State Parties.

Saving for criminal proceedings.

#### PART XI – MISCELLANEOUS

48. Any income or dividend paid out of chargeable profits subject to tax under these Regulations shall not be subject to further tax under the provisions of the Income Tax or any other Act of Nigeria and/or Sao Tome.

Restriction on the effect of Income Tax and other Acts.

Further Regulations and orders.

49. (1) The Authority may propose further regulations or orders for the approval and adoption by the Joint Ministerial Council to give effect to any double treaty or other arrangements for the relief from

double taxation entered with any other country by either of the State Parties.

- (2) The Regulations referred to under subsection (1) may provide for the relief from taxes for accounting periods commencing or ending before the order or the provision came into effect.

**FIRST SCHEDULE Sections 10, 14 and 22**  
**Capital Allowances**

**Paragraph**

1. Interpretation
2. Provisions relating to qualifying petroleum expenditure
3. Owner and meaning of relevant interest
4. Sale of buildings , etc.
5. Annual allowances
6. Asset to be in use at the end of accounting period.
7. Balancing allowances
8. Balancing charges
9. Residue
10. Meaning of "disposed of "
11. Value of asset
12. Apportionment
13. Part of an asset
14. Extension of meaning of " in use"
15. Exclusion of certain expenditure
16. Asset used or expenditure incurred partly for the purpose of petroleum operations
17. Disposal without change of ownership

Interpretation

1. (1) For the purposes of this schedule, unless the context otherwise requires -

**"Lease"** - include an agreement for a lease where the term of the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including " leasehold interest" shall be construed accordingly and -

- (a) where, with the consent of the lessor, a lessee of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid: and
- (b) where, on the termination of the lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this schedule shall have effect as if the second lease were a continuation of the first lease.

**Qualifying expenditure** - means, subject to the express provisions of this Schedule, expenditure incurred in an accounting period which is -

- (a) capital expenditure (hereafter called “ qualifying plant expenditure”) incurred on plant, machinery and fixtures;
- (b) capital expenditure (hereafter called “ qualifying pipeline and storage expenditure”) incurred on pipelines and storage tanks;
- (c) capital expenditure (hereafter called “ qualifying building expenditure”) other than expenditure which is included in sub - paragraphs (a), (b) or (d) of this interpretation, incurred on the construction of buildings, structures or works of a permanent nature; or
- (d) capital expenditure (hereinafter called “ drilling expenditure) other than expenditure which is included in sub - paragraph (a) or (b) of this interpretation, incurred in connection with, or with petroleum operations in view on –
  - (i) the acquisition of, or rights in or over, petroleum deposits,
  - (ii) searching for or discovering and testing petroleum deposits, or winning access thereto, or
  - (iii) the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which there were constructed cease to be carried on:

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

(2) For the purposes of this schedule where -

- (a) any expenditure is incurred in respect of an asset owned by a company before its first accounting period , it shall be deemed to be qualifying expenditure incurred on the first day of its first accounting period; or
- (b) the asset in respect of which expenditure was incurred before the first accounting period is disposed before the first accounting period, any loss arising therefrom shall be deemed to be qualifying expenditure incurred by the company on that day and any resulting profit as income in accordance with section 9(1)(a) of these Regulations.

2. (1) For the purposes of this Schedule, where -

(a) an expenditure incurred prior to the first accounting period is deemed as qualifying expenditure in the first accounting period; and

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

then such expenditure shall be deemed to have brought into existence an asset owned by the company and in use for the purpose of such petroleum operations.

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

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

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

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

(2) Subject to the provisions of this paragraph, the expression "the relevant interest" means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the company which incurred expenditure such expenditure was entitled when it incurred the expenditure.

(3) When a company incurs qualifying building expenditure or qualifying drilling expenditure on the construction of a building, structure or works and the company is entitled to two or more interests therein, and one of those interest is an interest which is

Provisions relating to qualifying petroleum expenditure.

Owner and meaning of "relevant interest".

reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

Sale of buildings

4. Where the relevant interest in a building, structure or works is sold, the company which buys that interest shall be deemed, for all the purposes of this Schedule to have incurred, on the date when the purchase price became payable, capital expenditure equal to the price paid or the original cost of construction, whichever is lower:

Provided that -

- (a) where such relevant interest is sold before the building, structure or works is used, the foregoing paragraph shall apply but without the exception clause and the original cost of construction shall be the purchase price on such sale;
- (b) where any such interest is sold more than once before the building, structure or works is used, the provisions of sub-paragraph (a) shall have effect only in relation to the last of those sales.

Annual Allowance

5. (1) Subject to the provisions of this Schedule, where any company has incurred qualifying expenditure *wholly, necessarily and exclusively* for the purposes of petroleum operations, it shall be entitled to an allowance referred to as "annual allowance" at the appropriate rate per centum specified in Table 1 of this Schedule.
- (2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, there shall be retained in the books, in respect of each asset, an amount equal to one percent of the initial cost of the asset, which may only be written off in accordance with sub-paragraph (3) of this paragraph.
- (3) Any asset or part thereof in respect of which capital allowance has been granted may only be disposed of on the authority of a Certificate of Disposal issued by the Authority or any person so authorised.

Assets to be in use at the end of accounting period.

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

Balancing allowances.

7. Where in any accounting period, a company owning an asset in respect of which qualifying expenditure has been incurred disposes of such asset, an allowance referred to as "balancing allowance" shall be due to that

company for that accounting period where residue of that expenditure, at the date of disposal exceeds the value of that asset at that date:

Provided that such asset was in use by such owner in the trade or business immediately prior to its disposal.

8. Where in any accounting period, a company owning an asset in respect of which qualifying expenditure has been incurred disposes of such asset, the excess of the value of the asset at the date of disposal over the residue of that expenditure on that date (referred to as a balancing charge) shall be treated as income for that accounting period for the purposes of subsection (1)(c) of section 9 of these Regulations.

Balancing charges.

Provided that the asset was in use immediately prior to its disposal for the purpose of petroleum operation and the amount does not exceed the total of any allowance due under the provisions of this Schedule, in respect of such asset.

9. The residue of qualifying expenditure, in respect of any asset, at any date, shall be the total qualifying expenditure incurred on or before that date, by the owner in respect of such asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

Residue.

10. Subject to any express provision to the contrary, for the purpose of this Schedule -

Meaning of "disposed off".

- (a) a building, structure or works of a permanent nature is disposed of if any of the following events occurs -
- (i) the relevant interest is sold; or
  - (ii) that interest, being an interest depending on the duration of a License or Lease, comes to an end at the end of that License or Lease; or
  - (iii) that interest, being a leasehold interest, comes to an end otherwise than on the company entitled thereto acquiring the interest which is reversionary thereon; or
  - (iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;
- (b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of petroleum operation carried on by the owner thereof;

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

Value of an asset.

- 11.** (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or if it was disposed of without being sold, the amount which, in the opinion of the Authority, such asset or the relevant interest therein would have fetched, if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purposes of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sales thereof.

Apportionment.

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

For the purposes of this paragraph, all the asset which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposal of those asset.

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

Part of an asset.

- 13.** Any reference in this schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an individual part of that asset in the case of joint interests therein) and



when so construed any necessary apportionment shall be made as may, in the opinion of the Authority, be just and reasonable.

- 14.** (1) For the purposes of this schedule, an asset shall be deemed to be in use during a period of temporary disuse.
- (2) For the purposes of paragraphs 5, 6 and 7 of this Schedule -
- (a) an asset shall be deemed to be in use, for the purposes of petroleum operations, between the dates hereinafter mentioned, where the Authority is of the opinion that the first use to which the asset will be put by that company incurring such expenditure will be for the purposes of such operation;
- (b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:

Extension of meaning of "in use".

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

- 15.** (1) Subject to the express provisions of this Schedule, where any company has incurred expenditure, which is allowed to be deducted under any provisions (other than a provision of this Schedule) of these Regulations, such expenditure shall not be or be treated as qualifying expenditure.
- (2) Where any company has incurred expenditure upon any ocean going oil tanker plying between the State Parties and any other territory that expenditure shall not be treated as qualifying expenditure.
- 16.** (1) The following provisions of this paragraph shall apply where one or both of the following conditions occur with respect to any asset -
- (a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of petroleum operations carried on such owner and partly for other purposes.
- (b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for petroleum

Exclusion of certain expenditure.

Assets used or expenditure incurred partly for the purposes of petroleum operations.

operations carried on by such owner and partly for other purposes.

- (2) Any allowances or balancing charges due on any qualifying capital expenditure shall be computed in accordance with the provisions of this schedule as if the asset were incurred and used wholly and exclusively the purposes of such petroleum operations
- (3) So much of the allowances and charges computed in accordance with the provisions of sub-paragraph (2) of this paragraph shall be due or shall be so treated, as the case may be, as in the opinion of the Authority is just and reasonable having regard to all circumstances and to the provisions of this Schedule.

Disposal  
without change  
of ownership.

- 17. Where an asset is disposed of in such circumstances that the owner remains the owner of the asset then, for the purposes of determining whether and, if so, in what amount, any allowance or balancing charge shall be made to or on such owner in respect of his use of the asset after the date of such disposal -
  - (a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be left out of account;
  - (b) such owner shall be deemed to have bought such asset immediately after the disposal for a price equal to the residue of such qualifying expenditure at the date of disposal, increased or decreased by the amount of any balancing charge or balancing allowance, respectively as a result of such disposal.

**TABLE 1**

<b>Annual Allowance</b>	<b>Rate Per Centum</b>
First Year .....	20
Second Year .....	20
Third Year .....	20
Fourth Year .....	20
Fifth Year .....	19