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Administration of Petroleum Industry Revenue Governance under the Nigerian Petroleum Industry Act 2021: An Overview

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ABSTRACT
Prior to the signing into law of the Petroleum Industry Act (PIA) 2021, the tax regime of companies engaged in petroleum operations in Nigeria was primarily regulated by the Petroleum Profit Tax Act (PPTA). The subsequent enactment of the PIA 2021 has adjusted and introduced major fiscal clauses in relation to the Nigerian petroleum industry, particularly in the upstream petroleum sector. The main objective of this article was therefore, to conduct an overview of the administration and enforcement of the fiscal governance under the extant petroleum industry regulatory legal framework in the light of some novel clauses introduced therein. The article adopted a library-based doctrinal research methodology by relying on both primary and secondary sources of information. The various sources of information were evaluated and inferences drawn there from. Findings of the article revealed *inter alia*, that the PIA has incorporated a number of fiscal innovations, including but not limited to a dual profit tax regime for upstream petroleum operating companies, namely the hydrocarbon tax (HT) and companies income tax (CIT) in lieu of the petroleum profit tax (PPT) under the PPTA. The authors therefore, recommended that if the Nigerian government will succeed in creating a dynamic fiscal framework that promotes investments in the Nigerian oil and gas industry, balancing the profits with attendant risk and attracting revenues to the government, compliance with the clauses of the statute becomes imperative both by the government and the relevant stakeholders in the sector.

Keywords: *Companies Income Tax, Fiscal Regime, Governance, Hydrocarbon Tax, Nigeria, Petroleum Industry Act, Petroleum Industry Revenue, Royalty*

INTRODUCTION

After a chequered history, the Nigerian Petroleum Industry Act was eventually passed by the National Assembly and signed into law by President Mohammadu Buhari on 16 August 2021;[1] thereby bringing to an end an approximately two decades of attempts aimed at reforming the Nigerian petroleum sector[2]. The primary goal of the legislation is to ensure good governance and accountability, the establishment of a commercially oriented national petroleum company and the fostering of a conducive business environment for petroleum operations[3]. In relation to the fiscal framework, the Petroleum Industry Act (PIA) 2021 introduces a novel tax regime which replaces the existing petroleum profits tax (PPT)[4] with a hydrocarbon tax (HT) as well as imposes tax on the income of operating oil companies. In other words, the PPT has now been replaced with HT and companies income tax (CIT).

Actually, the aims of the petroleum industry fiscal regime under the Petroleum Industry Act (PIA) 2021 are explicitly set out in section 258(1) of the statute. These include the creation of a forward-looking monetary system that promotes investment in the Nigerian oil and gas industry, stabilising gains with risk and enhancing revenues to the Nigerian government; provision of progressive fiscal governance that is founded on fundamental values of transparency, dynamism and economic standards of common application; establishment of a financial framework that broadens the revenue base of the Nigerian federal government while correspondingly safeguarding a equitable returns for investors; making easier the administration of petroleum tax; and encouraging fairness and clarity in the petroleum industry regime.

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[1] Enobong Mbang Akpambang, "An Appraisal of Upstream Petroleum Licensing Regime in Nigeria under the Petroleum Industry Act 2021", (2022) 89(2) *Curentul Juridic/The Juridical Current*, 30-50 at pp. 30-31.
[2] Kasirim Nwuke, "Nigeria's Petroleum Industry Act: Addressing Old Problems, Creating New Ones", *Brookings* (24 November 2021). Online at <https://www.brookings.edu/blog/africa-in-focus/2021/11/24/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/> (accessed on 2 December 2022).
[3] Petroleum Industry Act 2021, section 2.
[4] However, it is noteworthy that the Petroleum Profit Tax Act Cap. P13, Laws of the Federation of Nigeria 2004, is saved until the termination or expiration of all oil prospecting licences and oil mining leases under sections 311(9)(b) and 310(2)(c) of the PIA 2021.

The income due for collection from the petroleum industry and which is to be paid into the Federation Account[5] promptly include taxes, royalties, production shares, profit shares, signature bonuses, production bonuses, renewal bonuses, rents, fees, fines, and other levies due in respect of the grant, assignment, termination and violation of licences, leases and permits. It is worth noting that the administration and collection of the revenue of the government in relation to the petroleum industry is the responsibility of the Federal Inland Revenue Service (FIRS), the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA). Specifically, the FIRS is charged with the function of assessment and collection of the hydrocarbon tax and enforcement of the clauses of PIA in that regards as well as companies income tax (CIT) and tertiary education tax in compliance with the PIA as it pertains to taxable petroleum activities[6].

On the other hand, the NUPRC is required to determine the collection of royalties, signature bonuses, rents, and allied payment and its administration under the legislation in addition to payments pertaining to production shares where the model contract includes provisions associated with production sharing, profit sharing or risk service provisions[7]. The ascertainment and collection of gas flare penalty arising from midstream activities and its administration is the statutory duty of NMDPRA [8]. Both the NUPRC and the NMDPRA are excused from taxation of companies or trust [9]. Against this backdrop, this article carries out an overview of the Nigerian petroleum industry fiscal framework under the extant PIA 2021.

RESEARCH METHODS

The article used a library-based doctrinal legal research methodology by evaluating both primary and secondary sources of data. The primary sources of information included the examined legislative instruments like the Petroleum Industry Act 2021, Petroleum Profits Tax Act (PPTA), Companies Income Tax Act (CITA) and other applicable national laws as well as case laws. The secondary sources were the available related literature, newspaper reports and other correlated materials sourced from the internet, among others. Both sources of information were critically analysed with necessary and logical inferences drawn from them to form the opinions and conclusions arrived at in the paper.

PRE-PIA 2021 TAX REGIME UNDER THE PETROLEUM PROFITS TAX ACT (PPTA)

The principal legislation that regulated tax regime of companies involved in "petroleum operations" before the enactment of the PIA 2021 was the Petroleum Profits Tax Act 2004[10] while other non-petroleum operating companies' tax payments were regulated by the Companies Income Tax Act (CITA)[11]. The PPTA defines "petroleum operations" as relating to the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account through any drilling, mining, extracting or other activities or process but excluding refining at a refinery in the process of conducting a business by the company involved in such activities and all operations supplementary to it and any sale of or any disposal of chargeable oil by or on the behalf of the company[12]. As a matter of fact, PPT is payable by only a corporate entity unless in a situation where the relevant company is wound up or the likely taxpayer or company is non-resident in Nigeria [13].

While Part 3 of the statute concerns the imposition of tax and the determination of chargeable profits within any accounting period [14]; Part 4 of the tax statute provides for the ascertainment of assessable and chargeable taxes. It sets the percentage of an assessable tax of a company at the rate of 85% [15]. In sections 30-34, the law addresses issues relating to preparation of accounts and the particulars to be supplied in filing tax returns during an accounting period. The statute goes further to make provision for a restriction period of six months within which period tax must be assessed and levied by the appropriate authority. Appeals in connection with such assessment lie to the established Board of Appeal Commissioners (BAC) and thereafter to the Federal High Court before proceeding to the Court of Appeal and terminate at the Supreme Court respectively, where the needs for subsequent appeals arise[16].

[5] The Federation Account is a special public revenue account recognised under the Constitution of the Federation of Nigeria (CFRN) 1999 (as amended) into which shall be paid all revenue received by the Government of the Federation of Nigeria, unless the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja (FCT)- see 1999 CFRN, section 162(1).
[6] PIA 2021, section 259(a).
[7] PIA 2021, section 259(b).
[8] PIA 2021, section 259(c). See also Enobong Mbang Akpambang, *supra* (note 1) at p. 33.
[9] PIA 2021, sections 24(11) & 47(10).
[10] Cap. P13, Laws of the Federation of Nigeria 2004.
[11] Cap. C21, Laws of the Federation of Nigeria 2004, see section 18 thereof.
[12] PPTA, section 2.
[13] PPTA, sections 24-25 & 27.
[14] PPTA, sections 8-20.
[15] PPTA, sections 21-23.
[16] PPTA, section 35-43; Constitution of the Federal Republic of Nigeria 1999 (as amend), section 233.

The law also makes miscellaneous provisions regarding the non-applicability of Personal Income Tax Act (PITA)[17] or any other tax legislation as it pertains to sums distributed as dividends after account has been taken of such amounts in the PPT payment[18] as well as issues bothering on double taxation arrangements[19]. Finally, the PPTA stipulates the offences for infraction of the clauses of the legislation[20] Specifically, section 24(1) renders it an offence for an individual, apart from a company, to engage in petroleum operations with the aim of sharing the profits that is derivable from it.

TAXATION FISCAL REGIME UNDER THE PIA 2021

The relevant tax regimes under the extant PIA 2021 are basically the hydrocarbon tax and the companies' income tax. These twofold fiscal regimes would be critically examined in this section of the article.

A) Hydrocarbon Tax (HT)

The HT is a new tax regime introduced under the PIA and it relates to assessable tax that are chargeable or levied upon companies that are involved in the upstream petroleum activities in the onshore, shallow and deep offshore waters[21]. It is applicable to crude oil as well as field condensates and liquid natural gas derived from associated gas produced upstream[22]. However, HT does not relate to associated and non-associated natural gas as well as condensates and natural gas liquids processed from non-associated gas in fields or gas processing plants, granted that the associated volumes are determined at the measuring points[23] or at the exit of the gas processing plant, irrespective of whether the condensates or natural gas liquids are afterwards mixed or combined with crude oil[24]. HT does not also apply to condensates and natural gas liquids produced from associated gas at gas processing or other facilities downstream of the measurement plants[25]. Another area that is not a subject of HT pertains to any frontier acreage until it has been reclassified to a general onshore as required by section 68(3) of the PIA[26]. The exclusion of the deep offshore operations from HT application may likely be a deliberate attempt by the Nigerian government aimed at encouraging and supporting oil companies involved in petroleum activities to conduct petroleum exploratory operations in the area[27].

The HT is charged upon the profits of any company engaged in the upstream petroleum operations in relation to crude oil and payable during each accounting period in a manner as stipulated in the PIA[28]. In the case of a production sharing contract (PSC) that was entered into before the date the PIA came into implementation and converted as required by section 92 of the statute, HT shall be levied and determined independently on the profits from each and every petroleum mining lease (PML) and payable during each accounting period in line with the relevant clauses of the statute.

Concerning any accounting period, the crude oil revenue of an operating oil company for the given period is the value of any chargeable oil adjusted on the measurement points based on the proceeds of the entire oil sold by the oil company and the value of the whole chargeable oil disposed by the company[29]. To determine the HT, the adjusted measurement point, allowable deductions, adjusted profits and non-permitted deductions are to be considered. The allowable deductions are *inter alia*, rent incurred by the company within the period under a petroleum mining lease (PML) or petroleum prospecting licence (PPL); all royalties, the debt for which was incurred and paid by the company during the duration of the accounting period in relation to crude oil and allied gas. Also, where a PML comprises of payments to the Federation Account connected to production sharing, profit sharing, risk service contracts or other forms of contractual arrangements under a model contract and the company had sustained liability for such payments, either in kind or cash, the payments are deductible in the computation of the adjusted profit of the company[30].

[17] Act No. 104 of 1993 (now Cap. P8, Laws of the Federation of Nigeria 2004).
[18] PPTA, section 60.
[19] PPTA, section 61.
[20] PPTA, section 51-59.
[21] PIA 2021, section 260(1).
[22] PIA 2021, section 260(1)(a).
[23] It is to be noted that a "measurement point" is a point to be determined in the field development plan when calculated for royalties purposes; where the point has not been determined, a point directly downstream of the flow station in the petroleum mining lease (PML); and where measurements occur outside the PML, a deemed measurement point in the PML based on a calculation approved by the NUPRC adjusting from the point that petroleum is measured- see the interpretation section of the PIA 2021, section 318.
[24] PIA 2021, section 260(1)(b)(i)-(ii).
[25] PIA 2021, section 260(1)(b)(iii).
[26] PIA 2021, section 260(3).
[27] KPMG, "Petroleum Industry Bill (PIB) 2021-A Game Changer?" Online at: <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/petroleum-industry-bill-(bill)-2020-%20a-game-changer.pdf>(accessed on 12 December 2022).
[28] PIA 2021, section 261.
[29] PIA 2021, section 262(1).
[30] PIA 2021, section 263(1)(a) and (b). For a detailed list of deductions that are permitted in the computation of the adjusted profit of a company engaged in upstream petroleum activities pertaining to crude oil for an accounting period, see generally PIA 2021, section 263.

Likewise, other acceptable deduction items include, expenses explicitly incurred as a result of repairs carried out on the company's premises, plants, machinery or fixtures used with the intention of performing production operations or for the renewal, repair or modification of production implements, appliances, tools or instruments[31]. Also deductible are the liability sustained by the company to the Nigerian federal government, any state or local government council in the form of stamp duties, taxes, fees or allied charges; or any sum contributed to any fund, scheme or arrangement that has been authorised by the NUPRC by virtue of the creation of the host communities development trusts (established under chapter three of the Act), environmental remediation fund, Niger Delta Development Commission (NDDC) and other related contributions.[32] Subject to the approval of the NUPRC, costs of gas reinjection wells that are re-injecting natural gas that would have been flared are also allowed to be deducted[33]. Where a deduction has been permitted to a company regarding a company's debt and the liability or a portion of it has been waived, released or recovered, the sum of the deduction equivalent to the debt or part of it would, for the purpose of computing the adjusted profit of the company within the relevant accounting period, be considered as proceeds of the company in which such waiver or release was made or provided.[34]

The issue of whether bank commissions or charges which are incidental expenses incurred by an oil company involved in petroleum operations in Nigeria is deductible has been judicially settled in a number of cases. In *Gulf Oil Company (Nigeria) Limited v. Federal Board of Internal Revenue*[35], the allowable tax deduction item under section 10(1)(l) of the PPTA (which is similar to section 263(1)(f) of the extant PIA) came up for interpretation. Briefly the facts were that by a ministerial directive of the Nigerian federal government and subsequent agreement with the appellant oil company, the petroleum profit tax was to be paid abroad in foreign currency to the credit of the Central Bank of Nigeria (CBN). By reason of compliance with the directive, appellant incurred some expenses which CBN charged as bank commission. It was the reasoning of the oil company that the bank commission was deductible from its profit before tax; but the respondent rejected the appellant's position.

The central issue before the court therefore, was whether the bank commissions or charges paid by the company by reason of its adherence to the ministerial directive was expenses solely, reasonably and inevitably incurred for the purposes of the oil company's petroleum operations as contemplated by section 10(1) of the PPTA. In answering the question in the affirmative, the Court of Appeal maintained that payment of bank charges or commission imposed by the federal government is expenses incurred in the process of the appellant's petroleum operations and was therefore, deductible under said section of the PPTA[36].

Again, in an earlier decided Supreme Court case of *Shell Petroleum Development Company of Nigeria Limited v. Federal Board of Internal Revenue*[37], the facts revealed that ordinarily, tax payable by the appellant oil company was assessable in Naira but because of some successive agreements entered into between the Nigerian federal government and the oil company, payments of petroleum profits tax made by the company were paid in British Pound Sterling (BPS) into the account of the CBN with the Bank of England at London. This resulted in the company/appellant converting United States Dollars (USD) into Naira and then converting Naira into BPS in order to be able to meet its responsibilities to the Nigerian federal government. The conversion from USD to Naira became necessary because the USD was and remains the currency in which sale of petroleum is made. As a result of the conversion which the appellant had undertaken, it incurred losses and thus demanded that the losses or expenses incurred should be deducted for tax purposes.

It was held by the apex court that the CBN charges/commissions were deductible as they constituted expenses completely, exclusively and unavoidably incurred for the purpose of petroleum operations of the appellant as required by section 10(1) of the PPTA[38]. In addition, the court maintained that the expenses incurred by company in respect of "exchange losses" in sourcing the BPS for the payment of the tax and the "scholarship expenses" were incidental to the petroleum operations of the appellant and were equally deductible[39]. However, financial or bank charges have now been categorised under section 264(d) of the PIA 2021 as expenses that are not tax deductible. But, would the non-tax deductibility of bank charges or commissions become applicable where such liability or expenditure was incurred

[31] PIA 2021, section 263(1)(c).
[32] PIA 2021, section 263(e)(f) and (h).
[33] PIA 2021, section 263(g).
[34] PIA 2021, section 263(2).
[35] (1997) 7 NWLR (Pt. 514) 698.
[36] Compare with a community reading of section 264(a) and (d) of the PIA 2021 which suggest that where the expenses or liability incurred by the company arose as a result of money expended or disbursed "wholly, reasonably, exclusively and necessarily incurred for the purpose of those operations" it could qualify as a deductible item or expenses.
[37] (1996) 9-10 SCNJ 231; (1996) 8 NWLR (Pt. 468) 256; (1996) LCN/2260, decided by the Supreme Court of Nigeria on 27 September 1996.
[38] (1996) 9-10 SCNJ 231, *Ibidem* at pp. 262-263.
[39] *Ibidem* at pp.257, 267-268.

"wholly, reasonably, exclusively and necessarily" with the intention of carrying on the business of petroleum operations within the contemplation of section 264(a) of the Act?

On the contrary, the PIA renders some deductions non-deductible with the aim of ascertaining the adjusted profit of a company dealing with crude oil in the upstream petroleum sector. Deductions such as penalties, litigation and arbitration costs, bad debts[40], financial or bank charges and interest on borrowing, tax inputted into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor, payment to provident, savings, widows' and orphans' or other society, scheme or fund, among others, are not deductible[41]. Other non-deductible expenses under this heading are expenditures for the purchase of information pertaining to the existence and scope of petroleum deposits; spending incurred in the form of penalty, natural gas flare fees or imposition regarding gas flaring; head office, costs sustained outside Nigeria or affiliate expenses; withdrawn capital or amount used or intended to be used as capital; and the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures[42].

In ascertaining the HT, the amount entitled to be deducted in an accounting period is subject to the cost price ration limit (CPRL) of 65 percent of gross revenues ascertained at measurement points[43]. It is pertinent to point out that while the assessable profits for a company or PPL for an accounting period is an amount of the adjusted profit after the deduction of the sum of any loss sustained by the company[44], in ascertaining the chargeable profit conversely, the total cost shall not be more than the CRPL[45]. In the event that deductions or any part thereof that are required to be made are not carried out in an accounting period, the company has discretion to notify the FIRS in writing within a space of five months after the end of the accounting period or such extended period of the need to defer such deductions to the successive accounting period[46]. The PIA permits that HT could be paid in equal monthly instalments with a final instalment becoming due and payable on or before the due date of the self-assessment of tax for such accounting period[47]. HT computation and assessment under the statute are mandated to be made in US Dollar (USD)[48].

Apart from companies that are engaged in upstream petroleum activities, other individuals or corporate entities that are subject of HT include any person or individuals either on his own account or in partnership with any other person with the aim of sharing the profit accruing from such petroleum operations[49] as well as companies engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement. The charge imposed on these companies will be in proportion to the equity interest held respectively by them[50]. Where two or more companies operating in the upstream petroleum sector, either in partnership, in a joint venture or in concert under any contractual arrangement, the FIRS may make regulations as required under the enabling Federal Inland Revenue Service (Establishment) Act (FIRSEA) 2007 to determine the tax to be levied or assessed upon such companies[51].

i) *Chargeable Tax*

The PIA classifies chargeable tax in relation to HT into two, namely, profit from crude oil for PML in relation to onshore and shallow water areas, which is stated as 30 percent of the lease holder's profit[52]; and profit on crude oil for PPL concerning onshore and shallow water areas which is set at 15 percent of the licensee's profit[53]. Where for accounting period the sum of the chargeable tax for the given time is lower than the amount stated in subsection (2) of section 268 of the PIA, the company is required to pay an additional amount of chargeable tax for that period equal to the

[40] It is submitted that including "bad debts" within the list of non-deductible expenses may lead to oil and gas companies paying taxes that they cannot recover. Such irrecoverable expenses may likely threaten the cash flow of such companies as they may be compelled, in some circumstances, to pay tax liabilities from capital or monies that have been reserved for further investments without any possible opportunity or hope to recoup the sum owed them by the government. See KPMG, "Petroleum Industry Bill (PIB) 2021-A Game Changer?" Online at: <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/petroleum-industry-bill-(bill)-2020-%20a-game-changer.pdf>(accessed on 12 December 2022). See also Chibuzor Anyanechi, et. al., "Nigeria: Petroleum Industry Bill (PIB) - A Game Changer" *Mondaq* (17 August 2021). Online at: <https://www.mondaq.com/nigeria/oil-gas-electricity/1102580/petroleum-industry-bill-pib-2021--a-game-changer-> (accessed on 12 December 2021).

[41] PIA 2021 264(d)(g) and (n). For a detailed list of deductions not permitted for purposes of calculating the adjusted profits of a company in any accounting period, see generally PIA 2021, section 264.

[42] PIA 2021, section 264(b)(c)(e) and (m).

[43] This excludes items listed under section 263(1)(a), (b), and (h). See, Sixth Schedule to the PIA 2021, paragraph 2.

[44] PIA 2021, section 265(1).

[45] PIA 2021, section 266(2).

[46] PIA 2021, sections 265(4) and (3).

[47] PIA 2021, sections 291(1) and (4).

[48] PIA 2021, sections 284 and 287.

[49] PIA 2021, sections 273(1).

[50] PIA 2021, sections 273(3) and (4).

[51] PIA 2021, section 273(5); Federal Inland Revenue Service (Establishment) Act No. 57 of 2007 (now Cap. F36 Laws of the Federation of Nigeria, 2004 (Revised Edition), section 61.

[52] PIA 2021, sections 267(a) and 93(6)(b) & (7)(b).

[53] PIA 2021, sections 267(b) and 93(6)(a) & (7)(a).

difference between those two amounts[54]. It is significant to point out that the rates of the HT charged are lesser in comparison to the assessable tax regime obtainable under the Petroleum Profit Tax Act which charges 85 percent of a company's chargeable profits of the relevant period[55].

ii) *Statement of Accounts on Profits and Losses*

Every company that is involved in the upstream petroleum activities concerning crude oil is required to make its accounts of profits and loss for the purpose of determining the HT within an accounting period. Such statement of accounts is to be prepared and submitted to the FIRS within five months of the accounting period or within a period of 5 months from the effective commencement date of the PIA[56]. Also, the company is statutorily required to submit an estimated return of its profits or losses to the FIRS within each accounting period for purposes of HT and where there is a variation in price, cost or quantity after filing of returns, the company is enjoined to file additional returns on a monthly basis that would contain the revised estimated tax[57]. Failure to submit a revised return will cause FIRS to impose interest on the defaulting company at the prevailing London interbank offered rate (LIBOR) or any other successor rate in addition to 10 percent points for the disparity of the revised tax over the assessed tax paid by the company[58].

iii) *Self-Assessment and Dispute on HT*

A company that is liable to pay HT can serve on the FIRS a self assessment for an accounting period of the company, which may be acceptable or rejected by FIRS. Where the FIRS either rejects the self assessment or the company neglects to deliver a self-assessment, the FIRS may assess an amount to be paid by the company[59]. At times, a disagreement may arise because of an assessment by the FIRS. To address such possible dispute, the PIA has provided some avenues through which the ensuing issue may be settled. Where a person disagrees with the notice of assessment served on him or the company by the FIRS, such an individual may apply in writing to FIRS by way of notice of objection within 30 days of the service of the assessment for its revision[60]. Where the assessment is not reviewed by the FIRS, the tax payer may apply to the Tax Appeal Tribunal (TAT)[61]. But in the absence of a valid objection or appeal being lodged within the stipulated time against the assessment, then the estimated tax would be deemed as final and conclusive[62].

Moreover, where an individual or company asserts that there was an excessive or flawed assessment in relation to an already paid HT, the statute requires the tax payer to apply to the FIRS within 6 years from the accounting period in which the alleged payment was made[63]. Where the claim is established, the FIRS will refund the excess money or set-off at the option of the applicant; but where the claim is spurious or frivolous, it will attract a penalty at the LIBOR or any other successor rate besides 10 percent points from the date the payment or set-off was made up to the date the refund is made by the applicant[64].

iv) *Some Comparative Analysis of the PPTA and the PIA*

As previously stated, under the pre-PIA fiscal governance, a dual tax regime was not in existence as it was only the PPT that was chargeable on the income coming from crude oil and field condensates while other upstream oil and gas profits were subjected purely to CIT fiscal regime. But under the present regime of the PIA, a dual taxation regime exists whereby both HT and CIT are charged on upstream petroleum companies. The corresponding implication of this is that when it comes to returns, only PPT returns applies to PPTA whereas a dual returns of HT and CIT are applicable under the PIA. On the issue of tax rates, under the PPT the rates of tax include 50% for production sharing contracts (PSCs), 65.75% and 85% for sole risks and joint ventures arrangements.

[54] PIA 2021, sections 268(1).
[55] See Petroleum Profits Tax Act 2004, section 21(1). See also, Isaac Anyaogu, "PIA lowered Nigeria's taxes, experts say hurdles to investments remain," *Business Day* (30 September 2022). Online at:< https://businessday.ng/amp/energy/articles/pia-lowered-nigerias-taxes-experts-say-hurdles-to-investments-remain/> (accessed on 3 December 2022).
[56] PIA 2021, section 277(1) and (2). For companies that are yet to start bulk sales or disposal of chargeable oil, they are required to file with the FIRS its audited accounts and returns within 18 months for newly incorporated companies and 5 months in the case of other companies. Failure to comply with the requirements of preparing and filing statement of account particulars attract payment of prescribed penalty- see section 277(3) and (4) of the PIA.
[57] PIA 2021, section 280(1) and (2).
[58] PIA 2021, section 280(3).
[59] PIA 2021, section 282 (1)-(3).
[60] PIA 2021, section 285(1) and (2).
[61] PIA 2021, section 288. TAT is created under the provisions of section 59 of the FIRSEA 2007. Tax appeal from a decision of TAT lies directly to the Federal High Court- see Fifth Schedule to the FIRSEA 2007, para. 11.
[62] PIA 2021, section 289.
[63] PIA 2021, sections 295 and 296(1).
[64] PIA 2021, section 296(2) and (3). See also generally Part IX, sections 297-301 of the PIA for various offences created and penalties relating to payment of tax.

On the other hand, under the PIA, the applicable tax rates are: HT-15% for petroleum prospecting licence (PPL) to 30% for PML depending on the terrain and 30% for CIT[65]. The items of expenses that may be deducted from a petroleum company's total income for purposes of taxation are set out, for instance, under section 10 of the PPTA and are not guided by "reasonability test" unlike the PIA deductibles which are guided by "reasonability test" [66]. The notion of reasonableness of permissible deductions is introduced in section 263(1) of the PIA which requires that the deducted expenses must be entirely "reasonably, exclusively and necessarily incurred." Unfortunately, the statute failed to define what will make the deducted expenses reasonable and thereby leaving the vacuum to be filled through a probable judicial interpretation or a subsequent legislative amendment. It has also been contended that given the unique intricacies of the Nigerian petroleum industry and the related vital monetary investments needed for petroleum operations, it may not be easy to ascertain what will not comprise a *reasonable* "cost in the absences of an adequate provision in the enabling law"[67].

The PIA also expressly classifies items such as interest on loan, bank charges, expenses incurred as penalty, and debts incurred in relation to tertiary education tax, companies income tax, any income tax, profit tax or other allied taxes whether charged within or outside Nigeria as deductions not allowed for the use of determining the adjusted profit of a company [68]. Another significant difference is that under the PPTA era, host community fund was not expressly provided for, although host communities and operating oil companies adopted a negotiated Global Memorandum of Understanding (GMoU), which for example, provided for 4% funding towards host communities development[69]. But under the PIA, a Host Communities Development Trust Fund is created with a mandatory requirement for a settlor to contribute yearly 3% of its actual operating expenditure in the immediate preceding fiscal year to the Fund[70]. Also, the PPTA does not admit CPRL but this is accepted under the PIA[71]. As it was observed earlier, in the event of any possible dispute arising by reason of assessment of tax, the PPTA provides for such dispute resolution to be initiated at BAC[72] while the PIA requires that such appeals be referred to TAT[73].

Penalties and fines charged under the PPTA were lower, for instance, ten thousand Naira (₦10, 000 - i.e. about USD 22.54) fine concerning offences under the statute for which no explicit penalty was provided and two thousand Naira (₦2, 000 - i.e. about USD 4.50) for every subsequent day the default continues, particularly as regards failure to keep records, submit a return, deliver accounts, particulars or information[74]. However, under the PIA, failure to file account returns within the stipulated period attracts a penalty of ten million Naira (₦10, 000, 000- i.e. about USD 22,548.07) for the initial day and two million Naira (₦2, 000, 000- i.e. about USD 4,509.61) for every other day the offence persists[75]. This is in addition to other sum as may be prescribed by the Minister of Finance by order published in the Federal Government Gazette[76].

The tougher sanctions in the form of penalties and fines launched under the PIA is indicative of the Nigerian government's commitment to safeguard strict observance with the relevant clauses of the legislation, prevent non-compliance and firmly establish probity by pertinent stakeholders, especially as such payments constitute non-deductible expenses under section 264(c) of the extant law. Nonetheless, where a company has a good reason that may hinder it from filing its tax returns as and when due, the law permits the company to notify the FIRS and agree with them for an extension period within which to file its returns in order to be exculpated from paying the prescribed penalty[77].

In addition, a careful examination of the PIA shows that the law significantly modified the calculation of chargeable profits and allowances by removing the limitation on capital allowances (CA); introduction of production allowances (PA) as a replacement for the investment tax allowances (ITA) and investment tax credits (ITC); removal of petroleum investment allowances and the split of acquisition costs of petroleum rights (CPR) into value of rights (VoR) and value of assets (VoA) in such a way that CA that can be claimed on VoR is currently 20 percent annually for the purposes of CIT. Conversely for the purpose of HT calculation, the yearly allowance on the VoR part is 20 percent while the VoA

[65] Azeez Alatoye, "Transmuting from Petroleum Profit Tax Act 2004 to Petroleum Industry Act 2021: Challenges and Prospects." Online at: <https://portal.citn.org/wp-content/uploads/2021/11/Transmutting-from-PPTA-to-PIA-Azeez-Alatoye-2-2.pdf> (accessed on 12 December 2022).
[66] Azeez Alatoye, *Ibidem* (note 65).
[67] KPMB, *supra* (note 27) at p. 32.
[68] PIA 2021, section 264(c), (d), and (l).
[69] Azeez Alatoye, *supra* (note 65).
[70] PIA 2021, section 240(2).
[71] Sixth Schedule to the PIA 2021, para. 2.
[72] PPTA, section 44.
[73] PIA 2021, section 279(3).
[74] PPTA, section 51(1).
[75] PIA 2021, section 277(4)(a).
[76] PIA 2021, section 277(4)(b).
[77] PIA 2021, section 281.

shall be tax depreciated at 20 percent annually, subject to a retention of 1 percent in previous year until the asset is disposed of[78].

B) COMPANIES INCOME TAX AND THE PETROLEUM OPERATIONS

Apart from the HT, another type of tax regime that is recognised under the PIA is the CIT. Any company, concessionaire, licensee, lessee, contractor or sub-contractor that engages in the upstream, midstream or downstream petroleum activities under the PIA shall also be liable to the Companies Income Tax Act (CITA)[79]. In ascertaining the CIT, the HT is not deductible[80]. Similarly, expenditure for buying of data concerning the existence and extent of petroleum deposits, apart from the acquisition of geological, geophysical and geochemical information; expenses sustained as a fine including natural gas flare fees or impositions; and production bonuses and signature bonuses that has been paid to acquire rights in or over petroleum deposits, signature bonuses or fees paid to renew PML or PPL or pertaining to fees paid for assignments, inclusive of marginal fields, among others are not deductable for purposes of CIT[81].

The funds of the host communities development trust created under the PIA is exempted from taxation, including CIT[82]; but the yearly 3 percent contribution made by each settlor towards the development of the host communities are deductible for purposes of determining both the HT and the CIT[83]. Finally, a person who has the intention of engaging in more than a stream of the petroleum operations (i.e. upstream, midstream or downstream) is required to incorporate different companies for each stream and the company when incorporated shall each be liable to pay CIT, though companies with a PML selected under section 93(6)(b) of the Act will not be charged stamp duties and capital gains tax by the government as pertained to the separation[84]. In the same way, all companies engaging in domestic midstream petroleum operations, downstream gas activities and wholesale gas utilisation industries as defined in the PIA are eligible to benefit from the incentives provided under section 39 of CITA[85].

Furthermore, every company engaged in the upstream petroleum activities across terrains is authorised to consolidate costs and taxes for purposes of settling its CIT liability on actual year basis, applying a parallel mechanism to that provided for HT, though as hinted earlier, HT is non-deductible for company tax[86]. CIT is applied as an entity-based tax and thus, allows for consolidation of results across terrains; implying that there is no field-by-field limitations[87]. In the case of a loss-making-company that has been acquired, in order for the acquiring company to benefit from the incentive, it will not be permitted to claim the losses of the company acquired[88].

C) OTHER REVENUES DERIVABLE FROM PETROLEUM OPERATIONS

i) *Signature Bonuses or Premiums*

Signature bonuses or premiums are monetary payments that are made to the government in consideration for the grant of petroleum prospecting licence, petroleum mining lease[89] or the signing of the production sharing contracts[90]. They are lump sum payments and are prerequisites for a valid petroleum contract[91]. Etikerentse has questioned the fairness of the Nigerian government in demanding for payment of signature bonuses in marginal fields' allocations when in actual fact such bonuses had earlier been paid by the primary farmor on the concession and that the lease being farmed into does not absolutely belong to the government. The author went on further to enquire rhetorically if the oil company farmor would partake in the sharing of the bonus payment in the circumstances[92]. Signature bonuses are more often than not substantial and differ depending on the size of the concession leased or licenced. Payment of the bonuses is in foreign currency, usually in USD, and must be paid within the stipulated time failing which the grant would be vitiated, unless an extension period is allowed[93].

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[78] PIA 2021, section 266(1). See also the Fifth Schedule to the PIA 2021 & the Sixth Schedule to the PIA 2021.
[79] Cap. C21, Laws of the Federation of Nigeria 2004; see PIA 2021, section 302(1).
[80] PIA 2021, section 302(5).
[81] PIA 2021, section 302(12) and CITA, section 27.
[82] PIA 2021, section 256.
[83] PIA 2021, section 257(1).
[84] PIA 2021, section 302(3).
[85] PIA 2021, section 302(6).
[86] PIA 2021, section 302(5).
[87] PIA 2021, section 272.
[88] KPMG, "Petroleum Industry Bill (PIB) 2021-A Game Changer?" Online at: <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/petroleum-industry-bill-(bill)-2020-%20a-game-changer.pdf>(accessed on 12 December 2022).
[89] PIA 2021, section 318.
[90] Lawrence Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice*, Fourth Edition (Benin City: Four Pillars Publishers, 2021), 201.
[91] Adedolapo Akinrele, Nigerian Oil and Gas Law 2 (2005) *Oil, Gas and Energy Law* 307.
[92] G. Etikerentse, *Nigerian Petroleum Law*, Second Edition (Lagos: Dredew Publishers, 2004) 267.
[93] *Federal Government of Nigeria v. Zebra Energy Limited* (2003) FWLR (Pt. 142) 154 at 204-205 (SC).

ii) *Petroleum Fees*

A holder of a PPL or PML is required under the PIA to pay fees in the amount and time stated in the licence or lease under the statute and regulations made by the NUPRC[94]. A PPL and PML are not to be granted without prior payment of applicable fees, applicable signature bonuses, and rent pertaining to the first year[95]. The NUPRC is mandated through regulations to publish the rates or fees payable pertaining to applications for: petroleum exploration licence (PEL); renewal of a PML; assignment of an interest in a PEL, PPL or PML; termination or effect a partial or full surrender of a PEL, PPL, or PML; permit to operate a drilling rig; granting of field development plan consent and the related PML; approval of the drilling of a well; exportation of samples for analysis; withdrawal of any the above mentioned applications; application for other fees as may be considered expedient by the NUPRC[96]. The fees mentioned above may not be comprehensive but they form part of the fees payable by companies carrying on the business of petroleum operations to the Nigerian government, some of which may be eligible for deduction as expenses in the HT or CIT computation of a company in a particular accounting period[97].

Where fees that are statutorily obligatory to be paid to the government remain unpaid for a period of thirty (30) days after the stipulated date when it becomes due for payment, it shall be deemed as a debt to the NUPRC with interest accruing every day at a rate to be determined through a regulation by NUPRC[98]. The NUPRC may at the expiration of the 30 days period and until the debt and the accrued unpaid interest are paid, enter into and upon the licenced or lease area; seize, distrain and sell any petroleum, petroleum products, engines machinery, implements, tools or other belonging of the licensee or lessee and use the proceeds derived there from to offset the debt, including the costs incurred in connection with the seizure and sale. The surplus money would be paid by the NUPRC to the holder of the licence or lease; but by no means shall such a debt or accrued interest owed to the government be waived or discounted[99].

iii) *Rents*

Every PPL and PML is subject to rent as imposed in the relevant regulation and the rent payable shall be an amount per hectare annually[100] and made payable into the Federation Account in addition to its being verified by the NUPRC[101]. Default in payment of rent results in penalty as stipulated in the regulations or any other legislation, and in the absence of such stipulation in the regulation, interest rate of LIBOR or any other successor rate together with 10 percent to the outstanding payment in USD shall apply. Where it happens that there is a failure to pay the appropriate rent within a period of three months, cancellation of such lease or licence would be commenced[102].

iv) *Royalties* [103]

Payments of royalties by oil companies conducting petroleum operations in Nigeria constitute a significant source of income to the Nigerian government. A number of royalties are specified under the Seventh Schedule to the PIA 2021. For instance, all production of petroleum, inclusive of production test, shall be a subject of royalties on a non-discriminatory basis in relation to every licensee or lessee. By reason of payment of royalties, condensates shall be considered as crude oil and natural gas liquids shall be deemed as natural gas. The payment is required to be paid into the Federation Account and subject to verification by the NUPRC[104]. The determination of price for royalties relevant to crude oil and condensates shall be based on the monetary oil price for the field at the measurement points under pertinent regulations or guidelines. The price is to be fixed by the NUPRC based on information supplied by lessees and from unclassified independent publications, allowing necessary modifications for quality and transport expenses as suitable to prices of comparable crude oils and condensates sold at global market[105].

With respect to natural gas, the applicable royalties shall be based on the economic gas price fixed for the field at the measurement point under relevant regulations or guidelines determinable by the NUPRC taking into account submissions by the lessees and based on the netback value at the measurement point based on the component of the natural gas on the basis of saleable or commercial natural gas, ethane, propane, butane, pentanes and other natural gas liquids as may be derived through the processing of natural gas[106]. Also the monetary oil price for every field shall take into account any quality disparities connected with global crude oils and condensates and shall be an export uniform price considering the deduction of transportation expenses within Nigeria from the measurement points as determined by the NMDPRA to

[94] PIA 2021, section 100(1).
[95] See the Seventh Schedule to the PIA 2021, para. 3(1).
[96] See the Seventh Schedule to the PIA 2021, para. 1 (a)-(j).
[97] G. Etikerentse, *supra* (note 92) at p. 269.
[98] PIA 2021, section 100(2).
[99] PIA 2021, section 100(3) and (4).
[100] See the Seventh Schedule to the PIA 2021, para. 2.
[101] See the Seventh Schedule to the PIA 2021, para. 5.
[102] See the Seventh Schedule to the PIA 2021, para. 4.
[103] For detailed information and rates of royalties payable under the PIA, see the Seventh Schedule to the PIA 2021, paras. 6-14.
[104] See the Seventh Schedule to the PIA 2021, para. 6.
[105] See the Seventh Schedule to the PIA 2021, para. 8(1).
[106] See the Seventh Schedule to the PIA 2021, para. 8(3).

export terminals[107]. The PIA also authorises payment of royalties either in kind or in cash at the discretion of the NUPRC but such shall be done in a manner as prescribed by relevant regulations or guidelines. This is in addition to the NUPRC informing the Minister of Finance that it intends to charge royalties in kind rather than in cash[108].

The law also makes provision for payment of royalties based on production which shall be calculated on a field basis at the rate stipulated in paragraph 10 of the Seventh Schedule to the PIA. In addition to this, "royalty by price" payable for onshore, shallow water and deep offshore regarding crude oil and condensates at the rate stipulated in the Act is also authorised[109], but there shall be no royalty by price for frontage acreages[110]. The royalty flowing from the "royalty by price" shall be for the credit of the Nigerian Sovereign Investment Authority (NSIA)[111]. Failure to pay the prescribed royalties within two months after the due date, irrespective of whether formal demand has been made or not, the outstanding payment will qualify to be a debt, attracting stipulated penalties[112] and may be a ground for revocation, seizure and/or distrain[113].

It is vital to note that following the amendment introduced by the Deep Offshore Inland Basins and Production Sharing Contract Act 2019, price-based royalty became applicable to crude oil and condensate that were produced from deep shores acreages when the price was above USD 20 on each barrel. However, under the PIA, price-based royalty on produced crude oil and condensates extends to every kind of contract areas when the price on each barrel is more than USD 50 [114].

v) *Oil Terminal Dues (OTD)* [115**]**

Payment of oil terminal dues payable to the Nigeria Ports Authority (NPA) constitutes another vital source of revenue generation for the Nigerian government from the petroleum sector. The OTD requires that dues may be levied on any vessel evacuating oil at any terminal point in relation to any service or facilities rendered or furnished by the NPA [116]. It may be recalled that under the PPTA, costs incurred as OTD was not eligible for deductible expenses for some reasons. First, OTD is required to be paid mainly by ship's master or owner and/or consignor or agent[117] and not expressly by the company that won and saved the oil and therefore, the dues would not have been incurred for the purposes solely or inevitably of the oil company's petroleum activities. Even when the expenses was incurred by the consignor or agent of the company, the expenses will still remain non-deductible because it was not sustained directly or concerning the consignor company's oil and gas operations in the first instance. The second possible reason is that under section 14 of the PPTA, a company's profits or losses/expenses occurring from its business in the transportation of chargeable oil by ocean going oil tankers are barred in the determination process of the company's income under the said statute[118].

vi) *Education Tax*

In amending the Tertiary Education Trust Fund (Establishment, etc) Act[119], the Finance Act 2021 states that a tax at the rate of two percent shall be charged on the assessable profits of a company, including companies that are involved in petroleum activities, other than a small company as defined under the extant CITA[120]. It is assessed and collected by the FIRS when assessing the tax of a company for its accounting period. Under the PPTA, the sum paid as an education tax was a deductible item[121]. Atsegbua posits that the same position is now obtainable under section 263(1)(h) of the PIA and that education tax is administered for the purposes of federal, state and local government academic institutions[122].But it would appear that going by the stipulation of section 264(l) of the PIA, "amounts incurred in respect of tertiary education tax" either sustained within or outside Nigeria is non-deductible for purposes of establishing the adjusted profit of a company engaged in petroleum activities.

[107] See the Seventh Schedule to the PIA 2021, para. 8(2).
[108] See the Seventh Schedule to the PIA 2021, para. 9(1) and (4).
[109] See the Seventh Schedule to the PIA 2021, para. 11(1).
[110] See the Seventh Schedule to the PIA 2021, para. 11(2).
[111] See the Seventh Schedule to the PIA 2021, para. 11(3).
[112] See the Seventh Schedule to the PIA 2021, para. 12.
[113] See the Seventh Schedule to the PIA 2021, para. 13.
[114] See the Seventh Schedule to the PIA 2021, para. 11(1)(a)-(d). See also, Deloitte, "The Petroleum Industry Act: Fiscal Framework." Online at <https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/energy-resources/PIA_Tax_Newsletter_Fiscal.pdf> (accessed on 12 December 2022).
[115] Act No. 9 of 1969 (now Cap. O8, Laws of the Federation of Nigeria 2004)
[116] OTD Act, section 1(1).
[117] OTD Act, section 1(2).
[118] G. Etikerentse, *supra* (note 92) at p.273.
[119] Act No. 16 of 2011.
[120] Finance Act No. 1 of 2021, section 34. See also Tertiary Education Trust Fund (Establishment, etc) Act 2011 (as amended), section 1(2).
[121] PPTA, section 10(1)(l).
[122] Lawrence Atsegbua, *supra*, (note 90) at p.206.

It is further submitted, as it is worth reiterating, that under section 257(1) of the PIA, payment by a licensee or lessee under section 240(2) of the statute towards host communities development fund is deductible for the purpose of HT and CIT as appropriate. By common logic of argument therefore, contributions or expenses sustained by a settlor in the direction of advancing and propagating of educational growth for the benefit of members of host communities as encouraged by section 239(3)(d) of the same legislation should also be deductible for purpose of HT and CIT.

vii)*Payment from Value Added Tax (VAT)*

VAT is charged and payable on goods and services at the rate of 7.5 percent by every taxable person[123]. This is an increment from the previous rate of 5 percent under the VAT Act of 1996 [124]. VAT payment by companies engaged in petroleum operations, as taxable individuals under the enabling statute, goes directly into the account of the Federal government, although it is subsequently shared among the federal, state and local government councils. Such expenses by the company are subjects of deductions in its tax computation[125].

CONCLUSION

From the above discussion, it is apparent that the PIA 2021 has modified the fiscal regime for companies engaged in the upstream petroleum operations as it introduces a number of improvements, including a dual tax regime, the HT and CIT in place of the PPT to regulate the sector. As demonstrated in the article, the fiscal modifications under the PIA aside from applying to licences and leases under the statute also becomes applicable upon conversion of existing oil prospecting licences (OPLs) and oil mining leases (OMLs) to PPLs and PMLs, respectively; termination or expiration of unconverted licences and renewals of OMLs. By necessary implications therefore, OPLs and OMLs that have not been transformed to PMLs continue to be levied the tax regime under the PPTA until the duration of such licensing regimes run out. However, the authors strongly recommend that transparency, good governance, accountability and strong political determination in the administration and enforcement of the new regulatory framework are required if the desired goals of the government regarding the petroleum industry's fiscal framework would be fulfilled.

CONFLICTING INTERESTS

The authors declare that they have no conflict of interests.

[123] Finance Act 2021, section 42.
[124] See VAT Act No. 31 of 1996, section 27.
[125] G. Etikerentse, *supra* (note 92) at p. 274.