

# *Tax Guide for Petroleum Operations in Ghana*

2011



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## ***Word from the Ghana Tax Leader***



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***It is with great pleasure that we present you with the maiden issue of our tax guide for the upstream petroleum sector in Ghana.***

This publication summarises the main features of how income from upstream oil and gas operations are taxed in Ghana and incorporates the relevant legislation at the time of printing.

Ghana's upstream oil industry is relatively young and therefore very dynamic.

As the leading provider of tax services to the majority of entities operating

in the upstream petroleum sector, we are strategically placed to continually advise our clients as the sector evolves.

For more than 100 years, PwC has served the petroleum industry all over the world. Our aim is to continue that service, here in Ghana, at the highest standards.

**Darcy White**  
Tax Leader

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# Glossary

**Affiliate:** A company that holds not less than five percent of share capital or voting rights in a company undertaking petroleum operations or any company which controls, is controlled by, or is under common control with any person carrying on petroleum operations.

**Carried interest:** Interest held by Ghana National Petroleum Corporation (GNPC) in respect of which a Contractor pays for the conduct of petroleum operations without any entitlement to reimbursement from Ghana National Petroleum Corporation.

**Contractor:** Any person which is a party to a Petroleum Agreement (PA) with the Republic of Ghana and the GNPC made under the Petroleum (Exploration and Production) Law, 1984 (PNDCL 84).

**Expatriate employee:** A person who is not a citizen of Ghana and who is employed by a Contractor or Subcontractor and in respect of whom

approval has been obtained from Government of Ghana for his inclusion within the immigrant quota of the Contractor or Subcontractor.

**Gross Production:** Total amount of petroleum produced and obtained from a development and production area during the petroleum operation.

**Exploration:** The search for Petroleum and determination of Commercial Discovery.

**Development:** The building and installation of facilities for production, and testing activities carried out prior to the date of commencement of commercial production.

**Non resident Individual:** Individual who has stayed in Ghana for a period or periods, which in total is less than 183 days in a twelve-month period.

**Production:** Activities conducted after the Date of Commencement of Commercial Production of the respective Development and Production Area.

**Petroleum capital expenditure:**

Expenditure incurred in searching for and discovering petroleum reservoirs, testing the characteristics of the petroleum, installation of facilities for the production, development, gathering, transportation and sale or export of petroleum.

**Petroleum operations:** Exploration, Development and Production activities undertaken by Contractors.

**Resident individual:** A citizen of Ghana, other than a citizen who has a permanent home outside Ghana for the whole of the year; a person present in Ghana for a period or periods equal in total to 183 days or more in any twelve-month period that commences or ends during the year; an employee or official of the Government of Ghana

posted abroad during the year; or a Ghanaian who is temporarily absent from Ghana for a period not exceeding 365 continuous days where that Ghanaian has a permanent home in Ghana.

**Subcontractor:** Any person who enters into a contract with a Contractor for the provision of work or services (including rental of plant and equipment) in Ghana for or in connection with the PA to which such Contractor is a party and where the PA so provides includes any non-resident person or non-resident company.

**Year of assessment:** The calendar year from 1 January to 31 December.

**Year of commencement:** The year of assessment in which a Contractor first produces petroleum under a programme of continuous production for sale.



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# Overview of oil and gas industry

***Exploration for oil and gas in Ghana started in 1886 in Onshore Tano Basin in the Western Region. The first offshore well was drilled in the Saltpond basin between 1966 and 1972.***

During the 4th republic, the process of facilitating the search for oil and gas in commercial quantities in Ghana was intensified and an agreement with Kosmos and the EO Group in 2004 resulted in the commercial oil find in 2007.

The Floating Production Storage Offloading (FPSO) (which is called FPSO Kwame Nkrumah), was tied and commissioned in May 2010 and arrived in Ghana on 21 June 2010. It is expected that, the FPSO will be able to process up to 120,000 barrels of oil a day with a storage capacity of 1.6 million barrels.

Commercial production started from the Jubilee field in the last quarter of 2010. The daily production from

the Jubilee oil field is expected to be 120,000 barrels of oil and about 120 million cubic feet of gas.

The Government of Ghana grants exclusive right to Contractors for exploring and producing petroleum in any contract area. The standard exploration period is 7 years which is divided into initial exploration period, first extension period and second extension period. Mandatory relinquishments are expected at the end of each exploration period. At the end of exploration, a development plan is presented and a production license may be awarded.

The state through the GNPC usually holds a 10% carried interest at the exploration and development stage of petroleum operations and 10% paying (paid) interest at the production stage. The State may opt for additional paid interest at the development and the production stages.



A list of some Contractors currently operating in the oil and gas industry in Ghana can be found below:

<b>Company</b>	<b>Area of Operation</b>
Vanco Energy & Lukoil	Deep Water Tano/Cape 3 Points
Eni Ghana Exploration and Production Limited	Cape Three Point Basin
Tullow, Kosmos & Others	Tano Deep
Afren Energy Ghana Limited	Offshore Keta Contract Area (Eastern Basin)
Tap Oil (Ghana) Limited	Offshore Accra Contract Area
Kosmos, Anadarko & Others	West Cape Three Points
Hess Corporation	West Cape Three Points Deep
Vitol Upstream Ghana Limited	Cape Three Points & South Cape Three Points
Saltpond Offshore Producing Company	Saltpond (Field Redevelopment)
Gasop Oil & Gas	Saltpond
Oranto Petroleum	Saltpond



## ***The legal framework***

The upstream oil and gas industry is currently regulated by:

### ***Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L 64) (GNPC Law)***

This law established the Ghana National Petroleum Corporation (GNPC) as the National Oil Company of the upstream oil and gas industry in Ghana. It sets out the functions, administration and corporate governance of the GNPC.

### ***Petroleum Exploration and Production Law, 1984 (P.N.D.C.L 84) (PEP Law)***

This law provides the framework for the management of oil and gas exploration, development and production in Ghana. It establishes the contractual relationship between the Republic of Ghana, GNPC and the prospective investor(s) in the upstream operations through the basic terms and the conditions of a Petroleum Agreement (PA).

### ***Petroleum Income Tax Law 1987 (P.N.D.C.L. 188) (PIT Law)***

The PIT law provides for the taxation of income of Contractors carrying out upstream petroleum operations.

### ***Petroleum Agreements (PAs)***

These are agreements signed by the GNPC, Government of Ghana and

the Contractor(s) of the oil fields and ratified by the Parliament of Ghana. The PA with the Contractor will specify:

- The area that has been applied for and awarded;
- Exploration period and the related work program and cost, and sanctions in case of default;
- Benefits to be derived by the State in the form of royalties and income tax; and
- The investor's portion of benefits and responsibilities.

### ***Prospective Laws***

The Government of Ghana seeks to make changes to the regulatory framework in the upstream oil and gas industry. These proposed changes include:

- Introduction of Petroleum (Exploration and Production), Bill that seeks to repeal the PEP law;
- Introduction of Revenue Management Act that will provide a framework for the collection, allocation and management of petroleum revenue; and
- Set up of a body to regulate the upstream oil and gas industry.

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# Taxation of contractors

## Corporate Tax

### Rate of Tax

Unless specifically provided in a PA, Contractors are required to pay tax on chargeable income at a rate of 50%.

Currently, most PAs have a corporate income tax at a rate of 35%.

### Deductions allowed

Outgoings and expenses wholly, exclusively and necessarily incurred in petroleum operations are generally allowed for tax purposes. The following expenses are generally allowed:

- Capital allowance;
- Bad debt;
- Tax losses brought forward from previous years;
- Rental and royalties;
- Contribution to a pension or provident fund to the extent that the total contribution by both the employer and the employee

does not exceed 25% of the total remuneration of the employee; and

- Training and education of Ghanaian citizens and nationals in approved institutions.

### Deductions not allowed

Expenditures that are not allowed include:

- Personal or domestic expenditure;
- Interest, charges, fees on borrowed amount in excess of commercial rate;
- Capital expenditure;
- Expenditure recoverable under an insurance contract;
- Any income tax or profit tax or similar tax; and
- Depreciation.

### **Capital allowances**

Capital allowances are granted to Contractors from the year of commercial production on petroleum capital expenditure at a rate of 20% on a straight line basis.

### **Carryover of tax losses**

Contractors may carry forward tax losses indefinitely.

### **Thin Capitalisation**

Thin capitalisation provisions currently do not apply to Contractors.

However, interest charges on borrowed amounts in excess of the commercial rate are disallowed in assessing the tax liability of Contractors.

### **Transfer Pricing**

The Commissioner-General is allowed to adjust non-arms-length transfers between related parties.



### **Anti-Avoidance Scheme**

The Commissioner-General may adjust or disregard a transaction, if he is of the opinion that the main purpose of the transaction is to avoid or reduce the tax liability of the Contractor.

### **Dividend Tax**

Dividend received by shareholders of Contractors in the upstream oil and gas industry are currently exempt from tax.

### **Capital Gains Tax (CGT)**

Contractors are currently exempt from tax on capital gains arising from the sale of assets.

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# Taxation of Subcontractors

## Rate of Tax

The rate of tax payable by a Subcontractor is dependent on the source of the income and is detailed in the table below.

Source of Income	Corporate Tax
Provision of works and services (including rental of tools and equipment) to a Contractor	Final withholding tax ranging between 5% to 10% of gross revenue depending on the Contractor's PA
Other business activities	Taxed in accordance with the general tax laws of Ghana.

## Revenue splitting

Where a Subcontractor supplies both goods and services to a Contractor, the Subcontractor may be required to split the revenue in respect of the goods and services and subject the revenue from the supply of goods to corporate tax at a rate of 25% in accordance with the general tax laws of Ghana.

The revenue from the supply of services to Contractors will be subject

to a final withholding tax at a rate as prescribed in the Petroleum Agreement of the Contractor.

In computing the chargeable income of the Subcontractor with respect to the revenue from the supply of goods to Contractors, expenses may be matched to the corresponding income stream or apportioned according to the proportional revenue split.

### ***Deductions allowed***

Outgoings and expenses are generally allowed in computing the chargeable income of a Subcontractor to the extent that the associated income has not been subjected to a final tax.

These expenses must generally be wholly, exclusively and necessarily incurred in the production of the income that is subject to corporate tax.

### ***Capital Allowance***

The allowable deductions include capital allowance computed in accordance with the general tax laws of Ghana.

### ***Thin Capitalisation***

The recommended interest bearing ratio of a majority related party debt to equity contribution of a non resident in its permanent establishment or subsidiary is 2:1.

Any interest charges or realised exchange losses arising on the debt in excess of the allowable ratio are disallowed in determining income assessable to tax of a Subcontractor.

It should be noted that, the thin capitalisation provisions do not apply to income of a Subcontractor that has already been subject to a final withholding tax on the gross revenue.

### ***Dividend Tax***

Dividends paid by the Subcontractor to its shareholders will be subject to a final withholding tax at a rate of 8%.

### ***Capital Gains Tax (CGT)***

Subcontractors are subject to CGT at 15% on any gains arising on the realisation of assets subject to CGT.



# Taxation of Individuals

## Tax Rates

The table shows the annual current and proposed tax rate on income earned by resident individuals in Ghana:

Year 2011	Chargeable Income GH¢	Rate %	Proposed Chargeable Income GH¢	Proposed Rate %
First	1,008.00	Nil	1,104	Nil
Next	240.00	5	360	5
Next	720.00	10	840	10
Next	14,232.00	17.5	17,976	17.5
Exceeding	16,200.00	25	20,280	25

## Non-Resident Individuals

A non-resident individual is liable to tax at a rate of 15% on any income earned in Ghana.

## Contributions to retirement benefit schemes

Individual contributions to the mandatory Social Security Scheme of 5.5% or 5% of salary are tax deductible.

Contractors and Subcontractors contribution of 13% or 12.5% on behalf of employees is tax deductible.

Contractors and Subcontractors are responsible for remitting the total mandatory contributions within 14 days from the end of the month.

Expatriate employees of Contractors are not required to contribute to the mandatory social security scheme.

## Exemption from Personal tax

Expatriate employees of Contractors and Subcontractors present in Ghana for a period less than 30 days or 60 days (depending on the PA) in a calendar year are exempt from personal taxes.

# Withholding Tax

## Contractors

The following are the applicable rates of withholding taxes on payment made by Contractors.

Payment	Rate %
<b>Resident persons</b>	
Payment to Subcontractors for works and services (including rental of tools and equipment)	5
Rent (for individuals and as investment income)	8
Supply of goods and services exceeding GH¢500	5
<b>Non-Resident persons</b>	
Payment to Subcontractors for works and services (including rental of tools and equipment)	5
Royalties, natural resources payments and rents	10
Management, consulting and technical service fees and endorsement fees	15
Short term insurance premium	5

Some PAs permit an exemption from the deduction of withholding taxes on payments made at cost between a Contractor and its affiliates.

## Subcontractors

The following are currently the applicable rates of withholding taxes on payments made by Subcontractors;

Payment	Rate %
<b>Resident persons</b>	
Interest (excluding individuals & resident financial institutions)	8
Dividend	8
Rent (for individuals and as investment income)	8
Supply of goods and services exceeding GH¢500	5
<b>Non-Resident persons</b>	
Dividend	8
Royalties, natural resources payments and rents	10
Management, consulting and technical service fees and endorsement fees	15
Short term insurance premium	5

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# Value Added Tax

## **Value Added Tax/ National Health Insurance Levy**

### **Scope**

Value Added Tax (VAT) and the National Health Insurance Levy (NHIL) are charged on taxable supplies at a rate of 12.5% for VAT and 2.5% for NHIL totaling a VAT charge of 15%.

### **The VAT Mechanism in oil and gas sector**

The PA states that Contractors, their Subcontractors and Affiliates are not subject to VAT and as such the Ghana Revenue Authority issues VAT Relief Purchase Orders (VRPOs) to the Contractors to relieve them from the payment of VAT.

Subcontractors are required to register for VAT, charge VAT on their services and claim any input VAT incurred.

Subcontractors are also required to file VAT returns showing the output VAT charged and input VAT incurred within thirty days after the VAT is charged or incurred.

Subcontractors entitled to refund are required to submit duly completed VAT refund claim forms (VAT 35). VAT and NHIL refund claims are required to be audited before any refund payments are made.



# Other Areas

## **Royalty Payment by Contractors**

Royalty payable by Contractors to the Government of Ghana ranges from 4% to 12% of gross production of crude oil depending on the PA of the Contractor.

The royalty rate for a Contractor depends on the perceived cost, the risk involved in the petroleum operation and the depth of the sea operation.

Royalties paid by Contractors are a tax deductible cost in assessing their tax liability.

## **Rental**

Contractors are subject to rental payments to the Government of Ghana for the use of government property, public lands, and specific services provided to public enterprises at a rate not higher than the commercial rate.

The following are the standard surface rental payable. These may vary depending on the petroleum agreement of the Contractor.

<b>Phase of Operation</b>	<b>Surface Rentals per annum</b>
Initial Exploration Period	US\$ 30 per sq. km
1st Extension Period	US\$ 50 per sq. km
2nd Extension Period	US\$ 75 per sq. km
Development & Production Area (on creation)	US\$ 100 per sq. km

Rental payments made by Contractors are tax deductible costs in assessing the tax liability of the Contractors.

### ***Additional Oil Entitlement (AOE)***

The Government of Ghana has a share or a percentage interest in the crude oil being produced in a development and production area by Contractors. The Additional Oil Entitlement (AOE) indicated in the petroleum agreements seeks to measure Ghana's entitlement to the crude oil and acts as an additional windfall tax.

This share is based on the after-tax inflation – adjusted rate of return that the Contractor achieved with respect to each field.

AOE are computed monthly, quarterly or yearly depending on the provisions of the petroleum agreement of the Contractor.

A provisional AOE calculation is based on the best estimates of factors in case of disagreement. A revision is made retrospectively when the disagreement is resolved.

A final computation of AOE is made within thirty (30) days following the filing of annual tax returns by the Contractor.



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# ***Administrative procedures***

## ***Furnishing of annual returns of income***

Contractors are required to file a return on income with the Ghana Revenue Authority within 4 months after the end of the Contractor's year of assessment.

The return should include certified statement of accounts of the petroleum operation for the year of assessment, an estimate of the tax due, a statement containing the full names, address, salaries, allowances and other remuneration of the employees of the Contractors, statement of amount of production of petroleum and the price paid for sale or export of the Contractor's share of the petroleum.

Subcontractors are required to file an annual income tax return with the Ghana Revenue Authority within 4 months after the end of their accounting year.

The return should include a separate statement of income and expenditure and a statement of assets and liabilities

for each business undertaking carried on within that business by that Subcontractor.

## ***Furnishing of quarterly return on income***

Contractors are required to file a quarterly return with the GRA within thirty days after the end of each quarterly period when production commences. The return should include an estimate of tax due.

## ***Furnishing of quarterly cost of production***

Contractors are additionally required to furnish Ghana National Petroleum Corporation with summaries of the production cost of their petroleum operations at the end of each quarter.

## ***Payment of income tax***

Contractors are required to make the quarterly tax payment within thirty days after the end of each quarter.

Any outstanding tax at the end of the year of assessment should be paid within 4 months after the end of the Contractor's year of assessment.

**Provisional Assessment**

The Commissioner-General shall raise a tax assessment after annual returns and quarterly returns have been filed by a Contractor.

The Commissioner- General is permitted to raise an additional assessment if he is of the opinion that the initial assessment does not show the true tax liability of the Contractor.

**Payment of withholding Tax**

Withholding tax is due on the 15th day after the month in which the deduction was made.

**Offences and Penalties**

The following penalties and in some cases criminal liability apply for the under listed offences.

Offence	Penalty
Failure to furnish a return	Double of the amount of the tax payable
Failure to comply with a requirement of notice or summon by the Ghana Revenue Authority	Not less than GH¢10 and where the notice is in respect of tax due or a provisional tax, the penalty is 15% of the tax payable.
Making false or misleading statement	Double of the amount of the underpayment of the tax which may result if not detected
Misrepresentation to obtain tax reduction	Not exceeding GH¢1,000
Failure to withhold tax	Personal liability to pay to the Commissioner-General the tax due but not withheld
Late payment of withholding tax	Where the default is not more than 3 months, 20% of tax payable and where the default exceeds 3 months, 30%
Late payment of mandatory social security contributions	3% per month of the contribution payable
Late submission of VAT returns	GH¢1,000 and GH¢0.5 for each day of default
Failure to issue VAT invoice to cover goods and services supplied	Not exceeding GH¢1,000
Falsification and alteration of documents relating to VAT	GH¢200 - GH¢1,000
Failure to maintain proper VAT records	Not exceeding GH¢1,000
Unauthorised collection of VAT	Up to 10 times amount of VAT involved
Evasion of VAT payments	Up to three times amount involved

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