**COMPARISON OF KEY LEGAL AND FISCAL TERMS OF CERTAIN INTERNATIONAL PRODUCTION SHARING CONTRACTS / AGREEMENTS AND THE MODEL PRODUCTION SHARING CONTRACT FOR THE EXPLORATION AND PRODUCTION OF PETROLEUM FOR ONSHORE BLOCKS ISSUED BY THE GOVERNMENT OF THE UNION OF MYANMAR (MAY 2013)**

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**ABBREVIATIONS AND DEFINITIONS**

BOE means barrel of oil equivalent

BOPD means barrels of oil per day

CGT means capital gains tax

Development Plan a plan for the development of a commercial discovery

DMO domestic market obligation

EIA means an Environmental Impact Assessment

EMP means an Environmental Management Plan

ICSID means the International Centre for Settlement of Investment Disputes

JCCs means joint cooperation contracts

MCF means a thousand cubic feet

MMCFD means millions of cubic feet per day (of gas)

MoEMR means the Ministry of Energy and Mineral Resources of Indonesia

MOGE means the Myanma Oil and Gas Enterprise

Myanmar draft PSC means the model production sharing contract for the exploration and production of petroleum for on shore blocks to be made with MOGE

PSA means production sharing agreement

PSCs means production sharing contract

SIA means a Social Impact Assessment

UNCITRAL Rules means The Arbitration Rules of the United Nations Commission on International Trade Law

USD or US$ means the currency of the United States of America

VPL means Vietnam Petroleum Law

([number]) indicates clause / section number in a particular PSA or PSC

1. **TERM**

**Myanmar draft PSC:**

Preparation Period (for conducting EIA, SIA and EMP)

**6 months** (extendable at discretion of MOGE)(3.2)

Exploration Period

**Up to 6 years** – 3 years (Initial Exploration Period) + 2 years (First Extension Period at Contractor’s option) + 1 year (Second Extension Period at Contractor’s option)(3.3)

Automatic extension if seismic or drilling operations in progress at end of particular period until 60 days after completion of such operations (3.4)

Automatic extension as to particular discovery area in case of discovery to enable Contractor to appraise discovery (3.4)

Production

**20 years** from the date of completion of development in accordance with Development Plan, or according to petroleum sales contract (3.5)

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **Kurdistan[[1]](#endnote-1)**  | Exploration Period* Initial term of **5 years**, extendable on a yearly basis (up to a maximum period of **7 years)** (6.2)

Development Period* **20 years** commencing on the declaration of commercial discovery, with an automatic right to a **5 year** extension (6.10)
 |
| **India[[2]](#endnote-2)** | ExplorationFirst Exploration Phase not to exceed **4 years** Second Exploration Phase not to exceed **3 years** Petroleum Mining* Petroleum mining lease granted for an initial period of **20 years** (11.5)
* Extension by mutual agreement (11.5 (b))
 |
| **Madagascar[[3]](#endnote-3)\****\*Offshore PSC* | Exploration * **8 years** (subdivided into first, second and third exploration phases)\* (4.2)

Exploitation * **35 years** (4.8)

*\*Duration of first, second and third exploration periods not stated in model PSC* |
| **Indonesia[[4]](#endnote-4)** | JCCs remain valid for a maximum of **30 years** from the date of approval (activities must commence within six months of signing). After this time, Contractor can apply for an extension for another (maximum) **20 years** |
| **Bangladesh[[5]](#endnote-5)** | Initial Exploration Period* **4 – 5 years** (4.1)
* If work programme consists only of geological and geophysical surveying with no commitment for exploratory drilling, Initial Exploration Period limited to **3 years**

Production* **20 years** from date of approval of development plan for an oil field (4.6)
* **25 years** from date of approval of development plan for a gas field (4.6)
* If commercial production still possible beyond applicable term, **5 year** extension may be granted (4.6)
 |
| **Mauritania[[6]](#endnote-6)** | Exploration PeriodTerm not specified in model PSC (3.1 and 3.2) Exploitation Period**25 years** from granting of exclusive exploitation authorization (9.11) |
| **Tanzania[[7]](#endnote-7)** | **Up to 11 Years –** 4 years (initial period) + 4 years (first extension) + 3 years (second extension) (5(b)(i), (ii) and (iii)) |
| **Vietnam[[8]](#endnote-8)** | * Term requirements set out in Vietnam Petroleum Law 1993 (amended in 2000)
* Petroleum contract not to exceed **25 years**, of which exploration period not to exceed **5 years** (**30 and 7 years** respectively for gas)
 |
| **Timor-Leste[[9]](#endnote-9)** | * Development areas deemed to be relinquished on the first to occur of (i) production from the development area ceasing permanently or for a continuous period of 12 months; and **25 years** after approval of development plan
 |

1. **WORK COMMITMENT / MINIMUM WORK PROGRAMMES / MINIMUM EXPENDITURE**

**Myanmar draft PSC:**

Initial Exploration Period

Year 1 – G&G study and seismic acquisition, processing,

Year 2 – Drill minimum 1 well

Year 3 – Post-well evaluation & to drill 1 well

Minimum expenditure not specified

First Extension Period

Year 4 – Prospect evaluation

Year 5 – To drill 1 well

Minimum expenditure not specified

Second Extension Period

Year 6 – To drill 1 appraisal well

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **Kurdistan** | Exploration period divided into two sub-periods (10.1 – 10.3) | First Sub-Period (10.2)* geological and geophysical studies (compilation of a technical database; performance of remote sensing study; field visit to verify initial geological and geophysical work and remote sensing results and plan for two dimensional seismic acquisition)
* data search for existing data comprising well data (if available), , for example, electric logs, seismic data and gravity data (if available) and reprocess seismic data, if available
* field work comprising structural, stratigraphic and lithologic mapping and sampling
* acquire, process and interpret [ ] ([ ]) line kilometres of two dimensional seismic data, committing a minimum of US$[ ]\*
* drill 1 exploration well, committing a minimum of US$[ ]\*

*\*Minimum financial commitment not stated in model PSC* | Second Sub-Period(10.3)* acquire, process and interpret further seismic data (being either two dimensional or three dimensional)
* drill 1 exploration well committing for this purpose a minimum of US$[ ]\* (unless the data from the first exploration well demonstrates that there is not a reasonable technical case for drilling the second exploration well)

*\*Minimum financial commitment not stated in model PSC* |
| **India** | Mandatory Work Programme* 2D seismic – API covering contract area (5.2)

Minimum Work Programme* See First Exploration Phase and Second Exploration Phase opposite
 | First Exploration Phase (up to 4 years)(5.2.1)* 3D seismic / 2D surveying
* Exploration wells to be drilled to specified depths

*Number of wells, depth and minimum financial commitment not specified in model PSC* | Second Exploration Phase (up to 3 years)(5.3)* 3D seismic / 2D surveying
* Exploration wells shall be drilled to specified depths

*Number of wells, depth and minimum financial commitment not specified in model PSC* |
| **Madagascar** | * Minimum exploration work obligations not specified in model PSC (8)
* Bank guarantees to warrant execution of minimum exploration work obligation in each exploration phase. Amounts not specified in model PSC (9)
 |
| **Timor-Leste[[10]](#endnote-10)** | * Contractor has minimum work / budget commitment in each of the Initial Period (years 1 -3), Second Period (years 4 – 5) and Third Period (Years 6 – 7)
* Each yearly commitment involves data evaluation, surveys, and drilling. Specific details not stated in model PSC
 |
| **Mauritania** | * Initial / second / third exploration periods – seismic survey and drilling of exploratory wells (extent of survey and number of wells to be drilled not stated in model PSC) (4.1, 4.2, 4.3)
* Irrevocable bank guarantee to be provided in relation to minimum work obligations for the first initial exploration period (4.6) (Minimum financial commitment not stated in model PSC)
 |
| **Tanzania** | Initial Exploration Period(5(b)(i))First 2-Year Sub-Period* Geological: Evaluate, integrate and map all data related to the contract area
* Geophysical: 2D seismic
* Evaluate, integrate and map all seismic data related to the contract area

Second 2-Year Sub-Period* Drilling: Exploration wells

*Number of wells, depth and minimum expenditure not specified in model PSC* | First Extension Period(5(b)(ii))* Geological, geochemical and geophysical studies
* 3D seismic / 2D surveying
* Drill at least 1 well

*Number of wells, depth and minimum expenditure not specified in model PSC* | Second Extension Period(5(b)(iii))* Geological, geochemical and geophysical studies
* 3D seismic / 2D surveying
* Drill at least 1 well

*Number of wells, depth and minimum expenditure not specified in model PSC* |

1. **ROYALTY:**

**Myanmar draft PSC:**

12.5% of “Available Petroleum” (i.e. petroleum produced and saved and not used in petroleum operations) (10.1)

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **Kurdistan** | * Royalty of **10%**\* to be paid in kind or in cash as regional council requires from time to time
* Royalty applied on all petroleum produced and saved which is crude oil or non-associated natural gas, except for petroleum used in petroleum operations, re-injected in the petroleum field, lost, flared or petroleum that cannot be used or sold.

*\*Model PSC does not specify rate (royalty rate stated in Article 37 of the Oil and Gas Law of The Kurdistan Region –Iraq Law No. (22)- 2007)* |
| **India** | * **12.5%** of the well-head value of crude oil (17.4)
* **10%** of the well-head value of natural gas (17.4)
 |
| **Madagascar** | * Royalty based on volumes extracted from reservoirs within exploitation area and valued at international market price at delivery point (22.1)
* Royalty may be taken in kind or in cash (22.2)
* Royalty based on applicable Malagasy law (22.1)
 |
| **Nigeria[[11]](#endnote-11)**  | * The Nigerian Petroleum Act requires the holder of an oil prospecting licence to pay a royalty as soon as production commences
* Payment: Monthly in cash or kind (crude oil under PSC arrangements) at agreed rates of production
* Royalty rate ranges from **20% for onshore production** to 16.66% for offshore areas up to 200m waters depth, and 0% for production beyond 1,000m depth
 |
| **Tanzania** | * **12.5%** of total crude oil / natural gas production (before oil / gas cost recovery) (14 (c))
 |
| **Senegal**[[12]](#endnote-12) | * Between **2% and 10%** payable by holder of a PSC
* Liquid hydrocarbons exploited onshore: **2% to 10%**
* Liquid hydrocarbons exploited offshore: 2% to 8%
* Gaseous hydrocarbons exploited onshore or offshore: **2% to 6%**
* Royalties must be paid in cash to the state
* Royalties are calculated based on the total quantity of hydrocarbons produced in the concession and not used in the petroleum operations.
 |
| **Libya**[[13]](#endnote-13) | * A royalty is payable monthly at the rate of **16.67%** of production and valued at the Libyan posted price applicable to liftings in the month that the royalty is paid
 |
| **Vietnam**  | * Article 32 of Vietnam Petroleum Law as amended provides that the applicable royalty rate will be fixed in petroleum agreements
* Royalty of between **4 to 25 %** for oil and between **0 and 10%** for gas
 |
| **Ghana[[14]](#endnote-14)** | * Royalty on gross production of crude oil
* Percentage varies from block to block, water depth dependent, but not fixed in current law
* Ranges from **5%** **to 12.5%** of gross production of crude oil, **3%** of gross volume of gas production
 |

1. **EMPLOYMENT & TRAINING OF LOCAL PERSONNEL / TRAINING FUNDS**

**Myanmar draft PSC:**

Exploration Period

US$25,000 per year (15.2)

Production Period

US$50,000 per year (15.3)

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **Kurdistan**  | * Contractor to train all its personnel from the Kurdistan Region and other parts of Iraq directly or indirectly involved in petroleum operations (23.1)
* Secondments to be facilitated (23.2)
* Training plan to be submitted (23.5)
* Secondment fund allocation amount not specified in model PSC (23.3.1)
* Training fund allocation amount not specified in model PSC (23.6)
 |
| **India** | * Operator to offer a mutually agreed number of Indian nationals the opportunity for on-the-job training and practical experience in petroleum operations during the exploration period (22.1)
* Technology transfer clauses included – *“Foreign Companies shall separately endeavour to negotiate, in good faith, technical assistance agreements with the Government”* (22.3)
 |
| **Bangladesh** | * Contractor to maximize the employment of Bangladeshi nationals possessing the requisite qualifications and experience in petroleum operations (10.13(d))
* Employment of Bangladeshi nationals to be maintained in the following proportions:

Exploration PeriodInitial Exploration Period – not below 20%. Extended Exploration Period – not below 50%Production PeriodFirst 5 years – not below 60%Next 5 years – not below 75%Period after 10 years – not below 90%* Contractor to undertake development and training of its Bangladeshi personnel (including the training of Bangladeshi nationals to take over positions held by expatriate personnel) for all positions including administrative, technical and executive management positions (10.13(b))
* Contractor to offer an agreed number of Bangladeshi nationals the opportunity for on-the-job training and practical experience in petroleum operations (25.2(a))
* An annual programme for training and phasing in of Bangladesh nationals to be established (25.2(a))
* During the Exploration and Development Period, Contractor to expend a minimum of **US$50,000** per year (25.2(a)) and **US$100,000** per year thereafter (25.2(b)) on training
* Technology transfer clauses included (25.1, 25.3)
* During the Exploration and Development Period Contractor to make training grant of **US$150,000** per year to Petrobangla, and **US$200,000** per year following commencement of commercial production. Amounts not subject to cost recovery (25.6)
 |
| **Uganda** | * Licensee agrees to train and employ suitably qualified Ugandan citizens
* Licensee shall to pay the following amounts for training of Government personnel:

First Exploration Period – US$75,000 per yearSecond Exploration Period – US$75,000 per yearThird Exploration Period – US$75,000 per yearFollowing the grant of a petroleum production license – US$200,000 per year |
| **Madagascar** | * Operator and the Participants and their Subcontractors shall employ Malagasy nationals for all positions to be filled within the scope of this PSC if they have the requisite experience and professional qualifications (21.1)
* Secondment to be facilitated (21.2)
* Training fund allocation amount not specified in model PSC (21.6)
* Costs and expenses incurred to be charged to Petroleum Cost (21.7)
 |
| **Mauritania** | * Contractor to ensure priority employment for Mauritanian personnel and contribute to the training of such personnel in order to allow them access to any position of skilled worker, foreman, executive and manager (12.1)
* Contractor to contribute to the training and improving of the agents from the Direction of Mines and Geology (12.2)
* Training fund allocation amount not specified in model PSC (12.2)
 |
| **Tanzania** | * Contractor to employ Tanzanian citizens having appropriate qualifications to the maximum extent possible (19(b))
* Training fund – **US$150,000 per year** (19(c))
* Contractor to ensure transfer of management and operation functions to Tanzanian nationals within a period not exceeding five years from the commencement of commercial operations (19(d))
 |
| **Trinidad and Tobago** | * Contractor to pay training contribution to specified universities to finance training of nationals in appropriate fields of study associated with the energy sector as follows (21.1(b)(i)):

(1) a payment of US$120,000 for the first year of the PSC, increasing annually at a rate of 4% until commercial discovery;(2) in the event of commercial discovery, the amount to increase to US$150,000 in the year following commercial discovery increasing by 4% per annum until production commences(3) where production has commenced, payments under (2) to become 0.25% of the value of Contractor’s share of profit petroleum on a monthly basis* Contractor to fund the award of scholarships for the training of nationals of Trinidad and Tobago in appropriate fields of study associated with the energy industry. The value of such funding to be US$100,000 per annum for first year of the PSC, increasing at a rate of 4% annually (21.1(e))
 |

1. **BONUSES**

**Myanmar draft PSC:**

Signature Bonus: Payment of signature bonus within 30 days after approval from the Myanmar Investment Commission of the EIA / SIA). Amount not specified (11.1)

Production Bonus: (11.2)

|  |  |
| --- | --- |
| Crude OilUpon approval of Development Plan = US$500,00010,000 BOPD (for 90 consecutive days production) = US$1,500,00020,000 BOPD (for 90 consecutive days production) = US$2,000,000 50,000 BOPD (for 90 consecutive days production) = US$3,000,000100,000 BOPD (for 90 consecutive days production) = US$4,000,000 150,000 BOPD (for 90 consecutive days production) = US$6,000,000  | Natural GasUpon approval of Development Plan = US$500,00060 MMCFD (for 90 consecutive days production) = US$1,500,000120 MMCFD (for 90 consecutive days production) = US$2,000,000 300 MMCFD (for 90 consecutive days production) = US$3,000,000600 MMCFD (for 90 consecutive days production) = US$4,000,000900 MMCFD (for 90 consecutive days production) = US$6,000,000 |

| **Country**  |  **Summary of provisions**  |
| --- | --- |
| **Kurdistan**  | * Signature Bonus – payable within 30 days of ratification of PSC (amount not stated in model PSC) (32.1)
* Capacity Building Bonus – payable within 30 days of ratification of PSC (amount not stated in model PSC) (32.2)
* Production Bonuses – payable on first production and when production reaches certain amounts (not stated in the model PSC) (32.3)
 |
| **Indonesia**  | * Signature and production bonuses usually apply
* Amount varies depending on PSC terms
* The contractor pays a bonus at the time the contract is signed, which is not cost recoverable and not tax deductible
 |
| **Madagascar** | * Bonus figures based on sliding scale BOE per day not stated in model PSC
 |
| **Mauritania** | * Signature bonus (amount not stated in in model PSC) (13.1)
* Production bonuses – graduated on BOPD basis (amounts not stated in model PSC) (13.2)
* Bonuses not petroleum costs (13.3)
 |
| **Bangladesh** | * Sliding scale (20.2, 20.3)

|  |  |
| --- | --- |
| Oil10,000 BOPD = US$500,000 20,000 BOPD = US$1,000,00030,000 BOPD = US$2,000,000 40,000 BOPD = US$2,500,00050,000 BOPD = US$3,000,000 100,000 BOPD = US$4,000,000 | Gas75 MMCF/day = US$500,000150 MMCF/day = US$1,000,000225 MMCF/day = US$2,000,000 300 MMCF/day = US$2,500,000375 MMCF/day = US$3,000,000600 MMCF/day = US$4,000,000 |
|  |  |
|  |  |

 |
| **India**  | * No bonus payments due
 |
| **Trinidad and Tobago**  | * Production bonuses payable on first attainment of a 60 consecutive day average at or in excess of the following production levels:

Petroleum production bonus 25,000 BOPD = US$1,500,00050,000 BOPD = US$2,000,000 75,000 BOPD = US$3,000,000 100,000 BOPD = US$4,000,000 Thereafter for every 50,000 BOPD exceeding 100,000 BOPD, US$1,000,000 (21.1(c))* Production bonuses are deductible when paid (21.6)
* Technical assistance / equipment bonus of US$300,000 also applies, payable in cash or in technical assistance and/or equipment (21.1(d))
 |
| **Libya**[[15]](#endnote-15) | * US$1,000,000 in respect of each commercial discovery within 30 days of production
* US$5,000,000 upon achieving cumulative production of 100,000,000 BOE and thereafter US$3,000,000 upon achieving each additional 30,000,000 BOE
 |

1. **PRODUCTION SPLIT (PROFIT ALLOCATION)**

**Myanmar draft PSC:**

* Split of “Profit Petroleum” (i.e. after deduction of royalty and costs)

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Crude Oil (9.7 (a)) BOPD MOGE (%) Contractor (%)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 0 – 10,000 | 60 |  40 |  |  |
| 10,001 – 20,000 | 65 |  35 |  |  |
| 20,001 – 50,000 | 70 |  30 |  |  |
| 50,001 – 100,000 | 80 |  20 |  |  |
| 100,001 – 150,000 | 85 |  15 |  |  |
| >150,000 | 90 |  10 |  |  |

 | Natural Gas (9.7 (b))MMCFD MOGE (%) Contractor (%)

|  |  |  |
| --- | --- | --- |
| Up to 60 | 60 | 40 |
| 61 – 120 | 65 | 35 |
| 121 – 300 | 70 | 30 |
| 301 – 600 | 80 | 20 |
| 601 – 900 | 85 | 15 |
| >900 | 90 | 10 |
|  |  |  |

 |

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **Kurdistan** | * Split based on sliding scale based on production (14.6A and 14.6B)
* Model PSC states percentages are “To Be Bid”
 |
|  **India** | * Percentages not stated in model PSC. Mechanism for calculation involves reference to “investment multiple”

*“Investment Multiple of the Contractor at the end of any Year is less than or equal to one and one half (1.500)/ is equal to or more than three and one half (3.500)/ is more than one and one half (1.500) but is less than three and one half (3.500)/ the Government shall be entitled to take and receive [\_\_\_] percent (\_\_%) and the Contractor shall be entitled to take and receive [\_\_\_] percent (\_\_%) of the total Profit Petroleum from the Contract Area with effect from the start of the succeeding Year”* |
| **Uganda** | Crude OilBOPD Government (%) Licensee (%)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 0 – 5,000  |  46 |  54 |  |  |
| 5001 – 10,000 | 48.5 |  51.5 |  |  |
| 10,001 – 20,000 | 53.5 |  46.5 |  |  |
| 20,001 – 30,000 |  58.5 |  41.5 |  |  |
| 30,001 – 40,000 |  63.5 |  36.5 |  |  |
| >40,000 |  68.5 |  31.5 |  |  |

 |
| **Mauritania** | Split not stated in model PSC (10.3) |
| **Tanzania** | Oil (11(h)(i)) Government Contractor0 – 12,499 BOPD 70% 30% 12,500 – 24,999 BOPD 75% 25% 25,000 – 49,999 BOPD 80% 20% 50,000 – 99,999 BOPD 85% 15% >100,000 BOPD 90% 10% | Gas (11(h)(ii)) Government Contractor0 – 19.99 MMSCFGPD 60% 40% 20 – 39.99 MMSCFGPD 65% 35% 40 – 59.99 MMSCFGPD 70% 30% 60 – 79.99 MMSCFGPD 75% 25% 80 – 99.99 MMSCFGPD 80% 20% >100 MMSCFGPD 85% 15% |
| **Gabon[[16]](#endnote-16)** | Contractor’s percentage of profit oil (%) Production amount 50 <50,000 BOPD47.5 50,001 – 100,000 BOPD45 100,001 – 150,000 BOPD42.5 150,001 – 225,000 BOPD40 225,001 – 300,000 BOPD38.5 >300,000 BOPD |
| **Indonesia[[17]](#endnote-17)**  | * Majority of PSCs are based on an oil 85% / 15 % after-tax split
* For gas, the after tax split is usually 70% / 30% for the Government and the Contractor, respectively
 |

1. **COST RECOVERY**

**Myanmar draft PSC:**

* Maximum 50% of “Available Petroleum” (i.e. petroleum produced and saved and not used in petroleum operations) (9.4)
* Recoverable costs include petroleum costs (including all intangible drilling costs, capital expenditures and exploration and appraisal expenditures) labor and related costs, material, transportation and employee relocation costs, services, damages and losses to material and facilities, insurance and claims, legal expenses, charges and fees, offices, camps and miscellaneous facilities, general and administrative expenses (Annexure C, 2)
* Capital expenditures recoverable at a rate of 25% per year based on amortization

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **Kurdistan** | * Contractor entitled to recover all petroleum costs incurred under PSC, up to certain percentage (not specified in model PSC) (2.6)
* Recoverable costs include surface rights, labour and associated labour costs, transportation and employee relocation costs, communications, office and miscellaneous facilities, ecological and environment costs, material and equipment costs, rentals, duties and other assessments, insurance and losses, claims, training costs, general and administrative costs, banking charges and currency exchange losses (Annex B, para 3)
* Ecological and environment costs that are recoverable include costs of restoration of the operating environment, incurred under approved scheme costs, costs incurred for the decommissioning of facilities and site restoration including any related activity and any contributions made by the Contractor to a decommissioning reserve fund (Annex B, para 3.1.7)
 |
| **India** | * The maximum amount of “Cost Petroleum” to which the Contractor entitled is X% (to be taken from the accepted bid) of the total value of the petroleum produced and saved from the contract area (15.9)

Exploration costs * 100% out of Cost Petroleum (15.3)
* Exploration costs are all direct and allocated indirect expenditures incurred in the search for petroleum in an area which is, or was at the time when such costs were incurred, part of the contract area, including expenditures incurred in respect of, aerial, geophysical, geochemical, palaeontological, geological, topographical and seismic surveys, analysis and studies and their interpretation, core hole drilling and water well drilling as part of exploration operations, labour, materials, supplies and services used in drilling exploration wells with the object of finding petroleum, facilities used solely in support of the operations including access roads, any service costs and general and administrative costs directly incurred on exploration activities, geological and geophysical information purchased or acquired in connection with exploration operations (2.2)

Development costs until first commercial production* 100% per annum beginning from the date of commercial production (15.4)
* Development costs are all direct and allocated indirect expenditures incurred with respect to the development of discoveries within the contract area including expenditures incurred on account of geological and geophysical information, drilling development wells, completing of exploration wells, purchase, installation or construction of production, transport and storage facilities, engineering and design studies for facilities, any service costs and general and administrative costs directly incurred in development operations (2.3)

Development Costs after the date of first commercial production * 100% per annum of the aggregate of such development costs beginning from the date such development costs are incurred (15.5)
 |
| **Madagascar** | * Participants may recover petroleum costs as incurred within **60%** of proportionally available liquid petroleum and available natural gas (after deduction of royalty) (23.4)
* Petroleum costs are stated as being set out in Annex B “Accounting and Financial Procedure”. The model PSC does not include annexures
 |
| **Indonesia** | * Contractor must obtain approval from state petroleum company before incurring investment and operational costs
* A contractor can recover relevant, budgeted operating costs authorized by state petroleum company after commercial production has started
* Non-recoverable costs are listed in Regulation of the MoEMR No.22 of 208 dated 30 June 2008 as well as Government Regulation No. 79 of 2010
* Cost recovery can be as high as **90%**[[18]](#endnote-18)
 |
| **Trinidad and Tobago** | * Contractor shall recover duly verified costs and expenses out of **80%** of all available crude oil and natural gas (i.e. all crude oil and natural gas produced and saved from the contract area and not used in petroleum operations) (18.7)

  |
| **Tanzania** | * Costs and expenses are recoverable after deduction of royalty from oil and gas produced and saved from the contract area up to an annual maximum of **50%** (11(c))

 * Recoverable costs include surface rights (all direct costs attributable to the acquisition, renewal, or relinquishment of surface rights acquired and maintained in force), labour and associated costs, transportation, charges for services, exclusively owned property, material and equipment rentals duties and other expenses, insurance and loss, legal expenses, training costs, and general and administrative costs (Annex D, 3.1)
* Unrecoverable costs include all costs incurred before the Effective Date, petroleum marketing or transportation costs, costs of any bank guarantee or letter of guarantee required under the PSC, costs of arbitration, and costs which, by reference to general oil industry practices, can be shown to be excessive (Annex D, 3.2)
 |

1. **DOMESTIC MARKET OBLIGATION**

**Myanmar draft PSC:**

* 20% of crude oil / 25% of natural gas of Contractor’s share of “Profit Petroleum” (i.e. after deduction of royalty and costs) at 90% of “Fair Market Value” (14.1)

|  |  |
| --- | --- |
| **Country**  | **Summary of provisions**  |
| **India** | * **100% – *“****Until such time as the total availability of Crude Oil and Condensate from all Petroleum production activities in India meets the total national demand as determined by the Government, each Company comprising the Contractor, shall sell in the domestic market in India (domestic sale obligation) all of the Company’s entitlement to Crude Oil and Condensate from the Contract Area.”* (18.1)
 |
| **Madagascar** | * Domestic market obligations set out in Madagascar’s Petroleum Code (26.1)
* Participants shall, **when necessary**, participate in supplying the local market with a portion of the Available Petroleum to which it is entitled
* Formulae for calculation included in model PSC (26.2)
 |
| **Mauritania** | * Contractor undertakes to sell portion of crude oil necessary to meet the needs of the domestic consumption in the country, which shall be equal at the maximum to the percentage which the quantity of crude oil produced by the Contractor during a particular year represents compared with the total quantity of crude oil produced in Mauritania during that year (17.2)
 |
| **Timor –Leste**  | * If, in the event of national need declared by the Prime Minister of Timor-Leste, it is necessary to limit exports of crude oil, the Ministry may, with 30 days advance written notice, require the Contractors to meet the needs of the local market with crude oil that it has produced and received pursuant to the PSC (9.1 (a))
 |
| **Indonesia[[19]](#endnote-19)** | * Obligation to supply petroleum and/or natural gas to meet domestic need
* Usually ranges from 5% to 25%. Law No. 22/2001 dated 23 November 2001 *(“*GR 79/2010”) provides that the DMO for oil and gas is **25%** of their production.
* Model JCCs include DMO (Article 11)

 |

1. **STATE PARTICIPATION**

**Myanmar draft PSC:**

15 % undivided interest, and MOGE has the option to extend up to 25% at its own discretion (19.1)

|  |  |
| --- | --- |
| **Country**  | **Summary of provisions**  |
| **Kurdistan** | * Up to **25%** (4.1)
 |
| **Madagascar** | * Participating interest not stated in model PSC (2.6)
 |
| **Trinidad and Tobago** | * Petroleum Company of Trinidad and Tobago Limited (“Petrotrin”) is the state company most actively involved in upstream operations
* Where a competitive bid round involves state enterprise participation **(which is not always the case)** MOEEA will normally name Petrotrin as the state oil company to be involved in the development of the relevant block
 |
| **Tanzania** | * TPDC (State petroleum company) may at any time, by notice in writing to Contractor, elect to contribute in participating interest of not less than **25%** of contract expenses other than exploration expenses (9(b))
 |
| **Mauritania** | * Government has the option of participating starting on the date of granting the first exclusive exploitation authorization (21.1)
* Level of state participation not stated in model PSC (21.3)
 |
| **Uganda** | * No more than **15%** (11)
 |
| **Indonesia** | * Once a plan of development is approved, a contractor must offer a **10%** participating interest to a regional enterprise\*

*\* Pursuant to Indonesia’s natural gas reserves, Law 22, GR 35* |
| **Ghana** | State Initial or Carried Interest* State receives a **10%** interest in each contract area. This interest is “carried” during the exploration and development phases. All the risk of exploration and development is borne by international oil company’s equity since the latter finances both the exploration and development costs[[20]](#endnote-20)

State Additional Interest* If a discovery is in commercial quantities, the State is entitled to buy additional interest in each contract area, for which it is responsible for full costs during development and production phases. The allowable percentage of this interest varies for each contract
 |
| **Nigeria**  | * Variable – Nigerian Petroleum Act provides for: *“Participation by the Federal Military Government in the venture to which the licensee or lessee relates, on terms to be negotiated”* (Paragraph 34(a) of the Nigerian Petroleum Act)[[21]](#endnote-21)
 |

1. **RESEARCH AND DEVELOPMENT (R&D) FUND**

**Myanmar draft PSC:**

0.5% of Contractor’s share of “Profit Petroleum” (i.e. after deduction of royalty and costs) (15.7)

|  |  |
| --- | --- |
| **Country**  | **Summary of provisions**  |
| **Kurdistan** | * No such obligation
 |
| **India** | * No such obligation
 |
| **Madagascar** | * No such obligation
 |
| **Bangladesh** | * US$0.03 per barrel of Contractor's profit oil and profit condensate and/or NGL and US$0.40 per MCF of Contractor’s profit natural gas towards contribution to R&D activities related to petroleum or any other activities as may be determined by Petrobangla (20.4)
 |
| **Trinidad and Tobago** | * Contractor to make R&D contribution for the financing of petroleum related R&D activity as follows (21.1(b)(ii)):

(1) a payment of US$120,000 for the first year of the PSC, increasing annually at a rate of 4% until commercial discovery(2) in the event of commercial discovery, the amount to increase to US$150,000 in the year following commercial discovery increasing by 4% per annum until production commences (3) where production has commenced, payments under (2) to become 0.25% of the value of Contractor’s share of profit petroleum on a monthly basis |
| **Tanzania** | * No such obligation
 |
| **Mauritania** | * No such obligation
 |

1. **INCOME TAX (AND OTHER KEY APPLICABLE TAXES AFFFECTING PETROLEUM OPERATIONS)**

**Myanmar draft PSC:**

* 25% on Contractor’s “Net Profit” (Income Tax Laws of the Republic of the Union of Myanmar) (9.11)
* 5 year tax holiday starting from production

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **India[[22]](#endnote-22)** | * Domestic companies are subject to tax at a rate of **30%** and foreign companies at a rate of **40%**
* Surcharge (**5%** on tax for a domestic company and **2%** on tax for a foreign company) must be paid if income is in excess of INR10 million
* All exploration and drilling costs are **100%** tax deductible
* Development costs (other than drilling expenditure) are allowable under the normal provisions under the domestic tax law
 |
| **Thailand[[23]](#endnote-23)**  | * Companies engaged in petroleum exploration and production in Thailand are subject to petroleum income tax at the rate of **50%** of annual profits, in lieu of corporate income tax which is imposed under general tax laws
* Petroleum income tax is regulated under the petroleum income tax law
* Taxable revenues include revenue from the sale of petroleum, the value of the petroleum disposed, the value of petroleum delivered in lieu of a royalty, revenue from the transfer of assets or rights relating to petroleum operations and any other revenue arising from petroleum operations (e.g., interest on surplus funds deposited with financial institutions in a savings deposit or similar accounts)
* Tax-deductible expenses generally include expenses that are normal, necessary, not excessive and that are paid in total, specifically for petroleum operations, regardless of whether they are paid in Thailand or outside Thailand. Capital expenditures (inclusive of pre-production expenditures and losses incurred prior to the first accounting period), surface reservation fees and income tax, and penalties and surcharges imposed under the petroleum income tax law are not deductible
 |
| **Trinidad and Tobago** |

|  |  |  |  |
| --- | --- | --- | --- |
| **Applicable Tax** |  **Crude Income** | **Gas Income** | **Rate** |
| Supplemental Petroleum Tax | ✓ | × | Sliding scale |
| Petroleum Profits Tax | ✓ | ✓ | 50%/25% |
| Unemployment Levy | ✓ | ✓ | 5% |
| Green Fund Levy | ✓ | ✓ | 0.10% |
| Withholding Tax | ✓ | ✓ | 5% |

[[24]](#endnote-24) |
| **Tanzania** | * Corporate income tax **30%**
* For tax purposes, depreciable assets include assets with a limited effective life that decline in value over time (i.e. assets include plant and equipment, mining petroleum permits, retention leases and certain licenses)
* Natural resource exploration and production rights and assets in respect of natural resource prospecting, exploration and development expenditures are depreciated at the rate of **20%**
 |
| **Indonesia[[25]](#endnote-25)**  | * Income tax - **25%** starting 2010 based on the new Income Tax Law No.36/2008 which was effective 1 January 2009 (older PSCs continue to attract a different rates of tax)
* Contractors pay income tax on a monthly basis based on actual liftings
* Government may demand the income tax payment in the form of crude oil or natural gas
 |
| **Ghana** | Petroleum Income Tax* Petroleum Income Tax Law sets default rate at **50%** but can be altered by contract
* In the PSC entered into in for the Jubilee Oil Field (offshore), the rate was been set at **35%,** which was 10% higher than the corporate profit tax rate

Additional Oil Entitlement* An additional payment to be made to the government if the post-tax rate of return for a project exceeds a targeted level. (i.e. 12.5%, 17.5%, 22.5%, and 27.5%. AOE terms have become more progressive over time

Other Taxes and Fees* Including surface rental fees and a **5%** withholding tax on subcontractors.[[26]](#endnote-26)
 |
| **Vietnam[[27]](#endnote-27)** | * Enterprise Income Tax: **32%** (exempt for first 2 years and **50%** reduction for 2 subsequent years possible)
* Value Added Tax: **0-10%**
* Export Tax: **4%** for Oil, **0%** for Gas (deductible)
 |

1. **GOVERNING LAW / ARBITRATION**

**Myanmar draft PSC:**

Governing LawArbitration

|  |  |
| --- | --- |
| Laws of the Republic of the Union of Myanmar (21.1) | Myanmar Arbitration Act, 1944 (22.3) |

| **Country**  | **Summary of provisions - Applicable law**  | **Summary of provisions -Arbitration\****\*Final arbitration mechanism. Agreements generally contain additional dispute resolution clauses aimed at resolving disputes before recourse to independent arbitration.*  |
| --- | --- | --- |
| **Kurdistan** | English Law (43.1) | * Forum/Rules – London Court of International Arbitration (42.1(ii))
* Venue/Seat – London (42.1(iii))
* Language – English (42.1 (iii))
 |
| **India** | Laws of India (32) | * Forum/Rules – Arbitration and Conciliation Act, [of India] 1996 (Arbitration Act) (33.9)
* Venue/Seat – New Delhi (Unless agreed otherwise) (33.12)
 |
| **Madagascar** | Malagasy Law (42) | * Forum/Rules – ICSID (40.2(a))
* Venue/Seat – not stated in model PSC (40.2(b))
* Language – French (40.2(b))
 |
| **Bangladesh** | Law of the People's Republic of Bangladesh (29) | * Law – Bangladesh Arbitration Act 2001 (30.8)
* Forum/Rules – UNCITRAL (30.8)
* Language – English (30.9)
* Venue/Seat – Dhaka (Unless agreed otherwise) (30.10)
 |
| **Trinidad** **and Tobago** | Laws of the Republic of Trinidad and Tobago (32.1) | * Forum/Rules - UNCITRAL (33.5)
* Language – English (33.6)
* Venue/Seat – Trinidad and Tobago (30.10)
 |
| **Tanzania** | Laws of the United Republic of Tanzania (27) | * Law of the United Republic of Tanzania (26(e))
* Venue/Seat - Dar es Salaam (26(e))
 |
| **Mauritania** | The Laws and regulations in force in the Islamic Republic of Mauritania (27) | * The Laws and regulations in force in the Islamic Republic of Mauritania (29.2)
* Forum – ICSID (29.1)
* Venue/Seat – Paris (29.2)
 |

1. **ENVIRONMENT, SITE DECOMMISSIONING**

**Myanmar draft PSC:**

* EIA, SIA and EMP to be prepared during 6-month initial preparation period (3.2)
* Contractor to conduct EIA and SIA and develop EMP and implement environmental protection and management in the contract area in accordance with Myanmar Law and in conformity with international petroleum industry’s practices (17.2(t))
* Contractor to take necessary precautions to prevent environment pollution as are consistent with international oilfield practices (17.2(e))
* After expiration or termination of PSC, or relinquishment of part of contract area, or abandonment of any field, Contractor to prearrange to remove all equipment and installations from the area in a manner acceptable to MOGE, and perform all necessary site restoration activities in accordance with applicable rules and regulations and international petroleum industry practices

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **Mauritania** | * Contractor to take any necessary actions during petroleum operations for protection of environment, including taking any reasonable steps in order to (1) ensure that all the facilities and equipment used for petroleum operations are in good order and correctly maintained in good repair; (2) avoid losses and discharges of petroleum produced as well as losses and discharges of mud or any other product used in petroleum operations; (3) ensure the protection of water bearing strata encountered during petroleum operations and provide the Director of Mines and Geology with all information obtained thereon; (4) store petroleum produced in storage facilities erected for that purpose; (e) as the case may be, rehabilitate the sites of the petroleum operations upon completion of each petroleum operation (6.4)
* Abandonment operations to be carried out by the Contractor in accordance with good international petroleum industry practice (24.2)
* Contractor shall take out and maintain in force, and cause to be taken out and maintained in force by its subcontractors, allinsurances with respect to petroleum operations, of the typeand for such amounts customarily used in the international petroleum industry, including third party liability insurances and insurances to cover damage to property and environment
 |
| **Kurdistan** | Environment provisions (37) * Contractor to take necessary measures to ensure that it, the operator, its subcontractors and agents attend to the protection of the environment and prevention of pollution, in accordance with standard practice in the international petroleum industry and any applicable Kurdistan Region Law.
* Prior to surrendering a portion of the contract Area, Contractorshall take reasonable measures to clean the area to be surrendered in accordance with standard practice in the international petroleum industry, such measures to includeremoval of facilities, material and equipment together with reasonable measures necessary for the preservation of fauna, flora and ecosystems, all in accordance with generally accepted practice in the international petroleum industry
* Contractor only responsible for site restoration or environmental damage to the extent the same pertains solely and directly to petroleum operations under the PSC
* Contractor to take reasonable precautions and measures to prevent any pollution which may arise directly as a result of petroleum operations and to protect the environment (fauna and flora), water sources and any other natural resources when carrying out petroleum operations
* Contractor to respect the preservation of property, agricultural areas, and fisheries, when carrying out petroleum operations.
* Contractor to carry out EIA before starting exploration operations
* Any reasonable expenditure incurred by Contractor in relation to environmental provisions shall be deemed recoverable petroleum costs

National Parks and Nature Reserve Areas (37.6, 37.7)* Contractor to take reasonable measures to minimise any adverse material impact on national parks and nature reserves

 * Government (i) represents and warrants that, on the effective date of PSC, there are no national parks, nature reserves or other protected areas located in whole or in part within the contract area where Contractor shall not be entitled to carry out Petroleum Operations and (ii) covenants that during the term of PSC it will not designate or create or permit the creation of any national parks, nature reserves or other protected areas, located in whole or in part within the contract area, where theContractoris entitled to carry out petroleum operations

Decommissioning (12.8, 38)* Development plan to include a preliminary decommissioning and site restoration plan
* Contractor right to establish a reserve fund for future decommissioning and site restoration (a “Decommissioning Reserve Fund”) at any time during the final 10 years of the term of production operations of a petroleum field. Once established, the Contractor to make regular contributions to the Decommissioning Reserve Fund based upon estimated petroleum field decommissioning and site restoration costs in accordance with standard principles and technical norms generally accepted in the international petroleum industry, and taking into account interest received and future interest expected to be earned on the Decommissioning Reserve Fund. Any contributions to the Decommissioning Reserve Fund shall be deemed recoverable petroleum costs
* If, at the end of the term of the production operations of the petroleum field, the Government decides to take over production operations in the petroleum field:

(1) the Government shall become liable for its future decommissioning and site restoration; (2) Decommissioning Reserve Fund shall be paid to the Government; and (3) the Government shall release the Contractor from any obligations relating to decommissioning and site restoration and shall indemnify the Contractor for any costs, liabilities, expenses, claims or obligations associated therewith. * If Contractor undertakes the petroleum field decommissioning and site restoration works, Decommissioning Reserve Fund to be paid to Contractor and used for decommissioning operations. The Contractor shall undertake any such decommissioning operations in accordance with standard practice in the international petroleum industry
* If the Decommissioning Reserve Fund is not sufficient to cover all decommissioning costs, balance to be paid by the Contractor and recoverable as petroleum costs from any other production areas or any other area which is the subject of another petroleum contract of the Contractor or any of its affiliates and, to the extent the balance is not recoverable as aforesaid, such remaining balance shall be paid by the Government
* If the Decommissioning Reserve Fund exceeds all decommissioning costs for the petroleum field, the balance shall be transferred to the Government
* Contractor to submit a detailed plan for decommissioning and site restoration no later than 24 months prior to estimated date for end of commercial production from production area
 |
| **Timor – Leste** | Development plan (4.11)* To include an environmental impact statement, and proposals for environmental management covering the life of the development
* Development plan to include a decommissioning plan, including a calculation of decommissioning costs, the annual decommissioning cost reserve, and proposal for decommissioning security agreement

Environment (5.3)* Contractor to employ in regard to the protection of the environment (including the marine environment and the atmosphere and the prevention of pollution) such standards, practices, methods and procedures, and shall do (and refrain from doing) all such other things, as are the most stringent of such standards, practices, methods, procedures and things as (1)  are employed by others exploring for, developing or exploiting petroleum in Timor-Leste, with due and proper consideration for special circumstances; (2) are employed by the Contractor in a comparable place in comparable circumstances, with due and proper consideration for special circumstances;

 * Contractors to submit to Ministry for approval, plans in all respects in compliance with above, to be reviewed annually
* Contractor to clean up pollution resulting from petroleum operations to the satisfaction of the Ministry, and meet the costs of so doing to the extent done by anyone else

 Relinquishment (3.4)* Relinquishment of all or a part of the contract area without prejudice to the obligations of the Contractor to decommission.

Decommissioning (4.14, 4.15)* Estimates of the monies required for the funding of the decommissioning plan to be charged as recoverable costs beginning in the year following year in which commercial production first occurs

 * Security pursuant to the decommissioning security agreement shall be provided in an amount equal to the sum of provisions for decommissioning costs made, and taken as recoverable costs
 |
| **India** | Protection of the environment (14)* Contractor to conduct its petroleum operations with due regard to concerns with respect to protection of the environment and conservation of natural resources
* Contractor to employ modern oilfield and petroleum industry practices and standards including advanced techniques, practices and methods of operation for the prevention of environmental damage in conducting its petroleum operations
* Contractor to cause a person or persons with special knowledge on environmental matters, to carry out two environmental impact studies in order (1) to determine at the time of the studies the prevailing situation relating to the environment, human beings and local communities, the flora and fauna in the contract area and in the adjoining or neighbouring areas; and (2) to establish the likely effect on the environment, human beings and local communities, the flora and fauna in the contract area and in the adjoining or neighbouring areas in consequence of the relevant phase of petroleum operations and to submit methods and measures for minimising environmental damage and carrying out site restoration activities.
* Studies shall include details of proposed access cutting; clearing and timber salvage; wildlife and habitat protection; fuel storage and handling; use of explosives; camps and staging; liquid and solid waste disposal; cultural and archaeological sites; selection of drilling sites; terrain stabilization; protection of freshwater horizons; blowout prevention plan; flaring during completion and testing of gas and oil wells; abandonment of wells; rig dismantling and site completion; reclamation for abandonment; noise control; debris disposal; and protection of natural drainage and water flow.
* Contractor shall, prior to conducting any drilling activities, prepare and submit for review by the Government contingency plans for dealing with oil spills, fires, accidents and emergencies, designed to achieve rapid and effective emergency response.

Decommissioning, site restoration (14.9 – 14.14, 16.3)* On expiry or termination of PSC or relinquishment of part of the contract area, the Contractor must (1) remove all equipment and installations from the relinquished area or former contract area in a manner agreed with the Government pursuant to an abandonment plan; and (2) perform all necessary site restoration in accordance with modern oilfield and petroleum industry practices and take all other action necessary to prevent hazards to human life or to the property of others or the environment.
* Contractor shall prepare a proposal for the restoration of site including abandonment plan and requirement of funds for this and the annual contribution. Annual contribution to be deposited in site restoration fund. Annual contribution calculated based on unit of production method i.e. Reserve to Production Ratio.
* Site restoration costs incurred by the Contractor shall be cost recoverable including but not limited to sinking funds established for abandonment and restoration of the contract area
* Obligations and liability of the Contractor for the environment limited to damage to the environment which: (1) occurs after the effective date of the PSC and (2) results from an act or omission of the Contractor
* Any credit balance in any site restoration account after site restoration to be shared between the Government and the Contractor as per the investment multiple reached at the time of ceasing of production from the contract area
 |
| **Bangladesh** | Development plan (8.11)To include details of anticipated adverse impact on environment and measures proposed to be taken for prevention thereof and for general protection of the environmentEnvironmental protection (10.6, 10.23(a)* Contractor while conducting petroleum operations to take necessary measures in accordance with good international petroleum industry practice to pay due regard to conservation, safety of life, property, crops, fishing and fisheries, navigation, protection of the environment, prevention of pollution and safety and health of personnel
* Contractor to abide by the laws, decrees, rules, regulations and ordinances on environment protection adopted by the People's Republic of Bangladesh and ensure prevention of pollution of the air, water, land and ecosystem.
* Before undertaking petroleum operations, the Contractor shall conduct all environmental examinations, assessments and studies required under Bangladesh law including Initial Environmental Examination (IEE), EIA and EMP as per Environment Conservation Act, 1995 and Environmental Conservation Rules 1997
* Contractor shall submit a disaster management plan to the Ministry of Environment and Forest for approval prior to undertaking petroleum operations.
* After completion of approved petroleum operations Contractor shall level, restore, demarcate and reclaim the affected sites. The cost for such work will be borne by Contractor. In case of no discovery, such work should be done before relinquishment of the area or before termination of PSC
 |

1. **DISPOSAL OF PSC INTEREST / CAPITAL GAINS TAX (CGT)**

**Myanmar draft PSC:**

Contractor liable to pay CGT at the rates (17.2 (i)):

* If the amount of net profit on disposal is up to US$100,000,000 40%
* If the amount of Net Profit is between US$100,000,000 and US$150,000,000 45%

| **Country**  | **Summary of provisions**  |
| --- | --- |
| **Bahrain** [[28]](#endnote-28) | * No CGT in Bahrain.
 |
| **Cameroon** [[29]](#endnote-29) | * Capital gains are taxed at the regular corporate rate, which may vary from **38.5%** up to a maximum of **50%**
* If the business is totally or partially transferred or discontinued, only one-half of the net capital gain is taxable, provided the event occurs less than five years after the start-up or purchase of the business, and only one-third of the gain is taxable when the event occurs five years or more after the business is begun or purchased
 |
| **Trinidad and Tobago**[[30]](#endnote-30) | * Prior approval of Minister required to assign or transfer
* Each assignment or transfer attracts the following levy on the value of the consideration (31.6):

(a) For every dollar of the first US$100,000,000: 1% (b) For every dollar of the next US$100,000,000: 1.5% (c) For every dollar thereafter: 2% * Income Tax Act (ITA) and the Corporation Tax Act (CTA), impose tax at specified rates on “short-term capital gains”
* Short-term capital gains are defined as gains arising on the disposal of assets within 12 months from the date of acquisition
* Pursuant to the Corporation Tax Act profits” means income and includes short-term capital gains. Petroleum profits tax is charged at a rate of **50%** on the chargeable profits of any person in respect of a production or refining business
 |
| **Mauritania** | * Subject to Ministerial approval (23.1)
* Assignment must be for more than thirty percent **30%** of the capital of the enterprise (23.2)
* Capital gains are treated as ordinary income and are subject to corporate income tax of **25%**. However, the tax implications may be different if the entity commits to reinvest the proceeds to acquire new fixed assets in Mauritania within three years of the fiscal year after the year of the sale[[31]](#endnote-31)
 |
| **Nigeria**[[32]](#endnote-32) | * Rate is **10%** of chargeable gains
* CGT is levied on gains arising from the disposal of chargeable assets; whether situated in Nigeria or not
* Capital gains accruing to non-resident companies or individuals outside Nigeria are only taxable to the extent received or brought into Nigeria
 |
| **Indonesia[[33]](#endnote-33)** | * Contractor has the right to transfer the interest under the contract to a related party or other parties with either written notification or prior written consent of BPMIGAS
* Income tax laws provide that the transfer of assets is subject to income tax
* GR 79/2010 provides that the transfer of a direct or indirect participating interest in the exploration stage is subject to a final tax of **5%** of gross transaction proceeds. However, the final rate is **7%** if the transfer is conducted when the participating interest is in the exploitation stage
* Transfers of participating interest to domestic companies, as required by the cooperation contract, are exempt from tax. The transfer of participating interests in the exploration stage with the intention to share risks is not considered taxable income if all of the following conditions can be satisfied:
* The transfer is not of the entire participating interest owned
* The participating interest is owned for more than 3 years
* Exploration activities have been conducted (i.e., working capital has been spent)
* The transfer is not intended to generate profit
 |
| **Kenya**[[34]](#endnote-34) | * Capital gains on the disposal of depreciable assets are treated as business income for the corporate entity and are taxed at the normal corporate tax rate of **30%** for resident corporations and **37.5%** for nonresident corporations
 |
| **Tanzania[[35]](#endnote-35)** | * Capital gains on the disposal of depreciable assets are treated as business income for the corporate entity and are taxed at the normal corporate tax rate of **30%**
* Gains from the realization of investment assets are taxed at **30%**
 |

1. *Production Sharing Contract [ ] block Kurdistan region between the Kurdistan regional government of Iraq and [ ]* – Issued by the Government of Federal Region of Kurdistan 2007. [↑](#endnote-ref-1)
2. *Model Oil and Gas Production Sharing Contract – India;* Issued by the Ministry of Petroleum & Natural Gas Government of India 2007) \*Model Indian PSC contains provisions relevant to onshore, offshore and deep offshore blocks. [↑](#endnote-ref-2)
3. *Offshore Production Sharing Contract between the Office of National Mines and Strategic Industries (OMNIS) XXXX and XXX* - Issued by The Office of National Mines and Strategic Industries 2006 [↑](#endnote-ref-3)
4. “*Indonesia Oil & Gas, Oil and Gas in Indonesia Investment and Taxation Guide” August 2011 - 4th edition* – Published by PriceWaterHouseCoopers. [↑](#endnote-ref-4)
5. *Model Production Sharing Contract 2008* - Issued by the Bangladesh Oil, Gas and Mineral Corporation (Petrobangla). [↑](#endnote-ref-5)
6. *Model Contract proposed to oil companies (1994 Unofficial English Translation)*–Issued by the Government of the Islamic Republic of Mauritania. [↑](#endnote-ref-6)
7. *Model Production Sharing Agreement between the Government of the United Republic of Tanzania and Tanzania Petroleum Development Corporation*

*and ABC Ltd for any area [2008]-* Issued by the Government of the United Republic of Tanzania. [↑](#endnote-ref-7)
8. *“Good Practice Note on (Upstream) Natural Gas”;* Page 62, Note Prepared For University of Dundee By Honoré Le Leuch 21 September 2011. [↑](#endnote-ref-8)
9. *Model Production Sharing Contract under the Petroleum Act;* Democratic Republic of Timor-Leste. [↑](#endnote-ref-9)
10. *Model Production Sharing Contract under the Petroleum Act;* Democratic Republic of Timor-Leste. [↑](#endnote-ref-10)
11. *“Good Practice Note on (Upstream) Natural Gas”;* Ibid Page 62. [↑](#endnote-ref-11)
12. “*Global Tax and Oil Guide 2012*”; page 439 [↑](#endnote-ref-12)
13. *“Global Tax and Oil Guide 2012*”; ibid page 230. [↑](#endnote-ref-13)
14. “*Ghana’s petroleum industry: the prospects and potential impediments towards good governance standards”*; Ghana Policy Journal, Volume 4, December 2010, page 10 [↑](#endnote-ref-14)
15. “*Oil Contracts, How to read and Understand them”*; page 80, Open Oil, [www.openoil.net](http://www.openoil.net). [↑](#endnote-ref-15)
16. *“Good Practice Note on (Upstream) Natural Gas”;* Ibid Page 62. [↑](#endnote-ref-16)
17. “*Indonesia Oil & Gas, Oil and Gas in Indonesia Investment and Taxation Guide”* ibid Page 50*.*  [↑](#endnote-ref-17)
18. *“Gas Development Master Plan Regional PSC Competition of Fiscal Terms”*; Rita Jolly - Petroleum Development Consultants, UK 21 June 2012 [↑](#endnote-ref-18)
19. *“Oil Contracts, How to read and Understand them”*; ibid page 91. [↑](#endnote-ref-19)
20. *“Ghana’s petroleum industry: the prospects and potential impediments towards good governance standards”*; ibid page 10. [↑](#endnote-ref-20)
21. *“Petroleum Act’*; Chapter P10, Laws of the Federation of Nigeria. [↑](#endnote-ref-21)
22. “*Global Tax and Oil Guide 2012”;* page 207. [↑](#endnote-ref-22)
23. “*Global Tax and Oil Guide 2012”;* page 480. [↑](#endnote-ref-23)
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