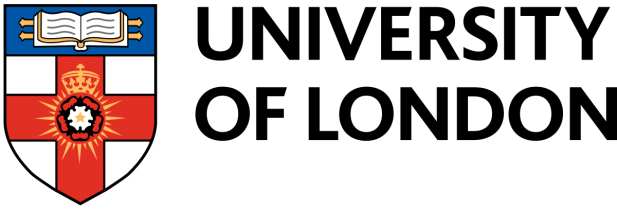
**Tax Policy And Tax Legislation In The Nigerian Upstream Oil And Gas Industry:**

*Achieving Certainty, Clarity, Consistency and Simplicity in Tax Policy and Law Making, Interpretation and Implementation*



**Presented by**

**Edem Andah**

**Supervisor: Philip Baker**

**In fulfilment of the requirement for the degree of**

**Doctor of Philosophy**

**In the subject of**

**Taxation Law**

**January 2024**

**London, England.**

**Sn. 084262100**

**Table of Contents**

LIST OF ABBREVIATIONS / TERMINOLOGY 5 - 10

ABSTRACT 10-13

**CHAPTER 1: THE CHALLENGE OF UNCERTAINTY IN UPSTREAM PETROLEUM TAXATION**

1. INTRODUCTION 14-16

1.1 NIGERIA OIL AND GAS INDUSTRY 16-23

1.2 THE CHALLENGE OF UNCERTAINTY IN NIGERIA’S UPSTREAM TAXATION 23-33

1.3 SCOPE AND RATIONALE OF THE RESEARCH 33-35

1.4 RESEARCH QUESTION AND HYPOTHESIS 36-37

1.5 RESEARCH METHODOLOGY 37-40

1.6 CONTEXT AND CONTRIBUTION TO SCHOLARSHIP 40-41

1.7 CHAPTER STRUCTURE 41-43

1.8 RECOMMENDATION 43-45

**CHAPTER 2: NIGERIA’S TAX SYSTEM**

1. INTRODUCTION 46-47

2.1 HISTORY AND EVOLUTION OF NIGERIA’S TAX SYSTEM 47-51

2.2 THE CONSTITUTIONAL FRAMEWORK OF NIGERIA’S TAX SYSTEM 51-55

2.3 THE STRUCTURE OF NIGERIA’S TAX SYSTEM 55-56

2.3.1 PRINCIPAL LEGISLATION AND TAXES 56-59

2.3.2. TAX ADMINISTRATION 59-61

2.3.3. TAX ADJUDICATION AND APPEAL PROCESS 61-65

2.4. TAX POLICY AND TAX LAW REFORM 65-68

CONCLUSION 68-69

**CHAPTER 3: TAXATION OF PETROLEUM OPERATIONS**

1. INTRODUCTION 70

3.1 BACKGROUND TO PETROLEUM OPERATIONS 70-74

3.2 THE NIGERIAN CONSTITUTION AND PETROLEUM TAXATION 74-80

3.3 THE PETROLEUM ACT AND THE FISCAL REGIME 80-85

3.4 PETROLEUM TAXATION AND OTHER TAXES 85-87

CONCLUSION 87-88

**CHAPTER 4: UPSTREAM PETROLEUM OPERATIONS AND TAX UNCERTAINTY**

1. INTRODUCTION 89 -91

4.1 UPSTREAM PETROLEUM TAXATION AND TAX POLICY AND LEGISLATION

UNCERTAINTY 92-106

4.2 THE PETROLEUM PROFITS TAX ACT AND THE PRODUCTION SHARING

CONTRACT (PSC) ACT 106-119

4.3 THE INTERACTION OF PETROLEUM PROFITS TAX ACT WITH OTHER TAX

STATUTES AND CHALLENGE OF UNCERTAINTY 120-127

4.4 THE JUDICIAL PROCESS AND THE CHALLENGE OF ACHIEVING CERTAINTY

IN UPSTREAM PETROLEUM TAXATION 127-134

CONCLUSION 135-136

**CHAPTER 5: POLICY AND TAX LAW MAKING IN THE NIGERIAN UPSTREAM PETROLEUM INDUSTRY**

1. INTRODUCTION 137-139

5.1 FISCAL POLICY EVOLUTION IN THE NIGERIAN UPSTREAM INDUSTRY 139-143

5.2 POLICY AND TAX LAW MAKING IN THE NIGERIAN PETROLEUM INDUSTRY 143-147

5.2.1 INTRODUCTION OF THE PRODUCTION SHARING CONTRACT 1973 147-148

5.2.2 THE FORMULATION OF THE NATIONAL OIL AND GAS POLICY 2007 148-149

5.2.3 THE DRAFTING OF THE PETROLEUM INDUSTRY BILL (PIB) 2008 149-150

5.2.4 NATIONAL OIL POLICY(NOP) AND NATIONAL GAS POLICY(NGP) 150-152

5.2.5 NIGERIA NATIONAL PETROLEUM FISCAL POLICY (NPFP) 152-154

5.3 THE LEGISLATIVE PROCESS AND PETROLEUM TAXATION 154-156

CONCLUSION 156-157

**CHAPTER 6: SURVEY OF THE NIGERIAN UPSTREAM PETROLEUM INDUSTRY**

1. INTRODUCTION 158-159

6.1 ADMINISTRATION OF SURVEY QUESTIONNAIRES / METHODOLOGY 159-160

6.2 PROFILE OF RESPONDENTS AND SUBJECT MATTERS SURVEYED 160-161

6.3 PRESENTATION AND ANALYSIS OF SURVEY RESPONSES 161

6.3.1 POLICY DESIGN, ENGAGEMENT AND CONSTITUTIONAL FRAMEWORK 161-163

6.3.2 CONSTITUTIONAL AND STATUTORY FRAMEWORK 163-165

6.3.3 TAX AUTHORITY AND TAXPAYER UNDERSTANDING OF LEGISLATION 165-167

6.3.4 TAX ADJUDICATION AND DISPUTE RESOLUTION 167-168

6.3.5 POLICY AND TAX LAW REFORM 168

6.4 SUMMARY OF FINDINGS 168-170

**CHAPTER 7: THE UNITED KINGDOM PETROLEUM INDUSTRY: A BRIEF COMPARATIVE REVIEW AND LESSONS FOR NIGERIA**

1. INTRODUCTION 171-173

7.1 TAX POLICY AND REGULATORY FRAMEWORK 173-180

7.2 THE DEVELOPMENT OF THE UK PETROLEUM FISCAL AND TAX LEGISLA-

TIVE REGIME 180-190

7.3 THE UNITED KINGDOM LEGISLATIVE PROCESS AND TAX LAW MAKING 190-192

7.4 ACHIEVING LEGISLATIVE CERTAINTY IN UNITED KINGDOM PE-

TROLEUM REVENUE TAXATION – A COMPARATIVE ASSESSMENT 193-200

CONCLUSION 200-201

**CHAPTER 8: THE CANADIAN PETROLEUM INDUSTRY: A COMPARATIVE REVIEW AND LESSONS FOR NIGERIA**

1. INTRODUCTION 202-206

8.1 THE ENERGY AND TAX POLICY FRAMEWORK IN CANADA 206-209

8.2 FISCAL POLICY AND TAX LAW MAKING IN THE CANADIAN PETRO-

LEUM INDUSTRY 209-213

8.3. PETROLEUM REVENUE TAXATION LEGISLATION AND REGULATION

IN CANADA 213-217

8.4. ACHIEVING CERTAINTY IN CANADIAN PETROLEUM TAXATION: A

BRIEF COMPARATIVE ANALYSIS 217-222

CONCLUSION 222-223

**CHAPTER 9: THE NIGERIAN PETROLEUM INDUSTRY ACT (PIA): A NEW FRAMEWORK**

1. INTRODUCTION 224-225

9.1 THE NEW LICENSES AND REGULATORY REGIME UNDER THE P.I.A 225-229

9.2 THE NEW OIL AND GAS FISCAL REGIME 229-233

9.3 A NEW TAX REGIME – HYDROCARBON AND COMPANY INCOME TAX 233-238

9.3.1 THE PIA TAX EXPENDITURE FRAMEWORK 238-240

9.3.2 DECOMMISSIONING AND ABANDONMENT COST UNDER THE PIA 240-241

9.3.3 GAS TAXATION UNDER THE PIA 241-242

9.4 THE NEW ROYALTY SYSTEM UNDER THE PIA 243-246

9.5 MARGINAL FIELDS FISCAL REGIME AND TAXATION 246-247

9.6 TREATMENT OF FEES, FINES AND MULTIPLE LEVIES AND CHARGES

UNDER THE PIA 247-249

9.7 PETROLEUM HOST COMMUNITY DEVELOPMENT PROGRAMME 249

9.8 TAX ADMINISTRATION AND DISPUTE RESOLUTION PROCESS 249-251

CONCLUSION 252-253

**CHAPTER 10: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

10.1 SUMMARY OF RESEARCH 254 - 257

10.2 CONCLUSIONS AND RECOMMENDATIONS 257 - 262

**GLOSSARY AND TERMINOLOGY**

ADR Alternative Dispute Resolution

AGFA Associated Gas Framework Agreement

APA Advance Pricing Agreement

BEPS Base Erosion and Profit Shifting

CCA Cost Contribution Arrangement

CCC Certainty, Clarity & Consistency

CFC Controlled Foreign Corporation

CGT Capital Gains Tax

CIAT Inter-American Centre of Tax Administrations

CIF Cost, Insurance and Freight

CITA Company Income Tax Act

CIT Corporate Income Tax

CIV Collective Investment Vehicle

CRS Common Reporting Standard

DOIBPSA Deep Offshore and Inland Basin Production Sharing Act / PSA Act

DPR Department of Petroleum Resources

DTA Double Tax Agreement

DTT Double Tax Treaty

E&P Exploration and Production

EI Extractive Industries

EIA Environmental Impact Assessment

EITI Extractive Industries Transparency Initiative

EOI Exchange of Information

ESHS Environment, Sustainability, Health, and Security

ESTM Extractives Sector Transparency Measurement Act (Canada)

FARI Fiscal Analysis of Resource Industries

FOB Free on Board

FGN Federal Government of Nigeria

FG Federal Government

FHC Federal High Court

FIRS Federal Inland Revenue Service

FT Financial Times

FTA Forum on Tax Administration

G20 Group of Twenty

GAAR General Anti-Avoidance (Abuse) Rule

GDP Gross Domestic Product

GST Goods and Services Tax

HMRC His Majesty’s Revenue and Customs

HMT His Majesty’s Treasury

IBFD International Bureau of Fiscal Documentation

ICMM International Council on Mining and Metals

INEC Independent National Electoral Commission

IEA International Energy Agency

IMF International Monetary Fund

IOC International Oil Company

IP Intellectual Property

IT Information Technology

JDA Joint development area

JOA Joint operating agreement

JTB Joint Tax Board

JV Joint venture

LIBOR London Interbank Offered Rate

LIFO Last In First Out

LTD Limited Liability Company

LNG Liquefied Natural Gas

LOB Limitation on Benefits

MAP Mutual Agreement Procedure

MOF Ministry of Finance

MOJ Ministry of Justice

MPR Ministry of Petroleum Resources

MNE Multinational Enterprise

NA National Assembly

NGO Non-Governmental Organization

NPV Net Present Value

NNPC Nigeria National Petroleum Corporation

NOC National Oil Company

NMDPRA Nigeria Midstream and Downstream Petroleum Regulatory Authority

NUPRC Nigeria Upstream Petroleum Regulatory Commission

O&G Oil and Gas

OECD Organization for Economic Co-operation and Development

PE Permanent Establishment

PPTA Petroleum Profits Tax Act

PIB Petroleum Industry Bill

PIA Petroleum Industry Act

PSA Production Sharing Agreement

PSC Production Sharing Contract

SAAR Specific Anti-Avoidance Rule

SAPETRO South Atlantic Petroleum E&P Company Limited

SPDC Shell Petroleum Development Company

SNEPCO Shell Nigeria Exploration and Production Company

SC Supreme Court

TAT Tax Appeal Tribunal

TPB Tax Policy Branch

TPM Tax Policy Making

TRACE Treaty Relief and Compliance Enhancement

UN United Nations

VAT Value Added Tax

This study uses various terminologies that are similar in meaning in Nigeria, Canada, and the United Kingdom. These terms are used very commonly in some jurisdictions more than the others. The equivalent terms carry similar meanings in the remaining jurisdictions. The following terms are used interchangeably in the Thesis:

Companies / Corporations.

Oil and Gas/Petroleum.

Shell / SPDC / SNEPCO.

Sector / Industry.

Tax Statute / Tax Law.

Company Law/Corporate Law.

Applicant/Complainant.

Notice / Demand.

Managers / Officers.

Actions / Suits.

**uncertainty is the lack of certainty – it is a state of limited knowledge where it is impossible to exactly describe the existing state, a future outcome, or more than one possible outcome – Wikipedia**

‘Whoever hopes a faultless tax to see,  
Hopes what ne’er was, or is, or e’er shall be’[[1]](#footnote-0)

**ABSTRACT**

Certainty as a concept means a firm conviction that something is the case. The Cambridge English dictionary defines certainty as the state of being completely confident or having no doubt about something[[2]](#footnote-1). Whether certainty is achievable in life is debatable, and clearly is outside the scope of this study. Certainty is, however, a key requirement for the proper operation of a ‘good’ legal or tax system. This is an area in which legal and tax systems in many jurisdictions fall short. For businesses, certainty is key to confident decision making. Plans based on incomplete assumptions introduce risk. Uncertainty about prospective tax receipts is equally concerning for government. Resolving uncertainty is therefore a poor second best to avoiding it in the first place, especially for individuals and small businesses, which may not have the resources to deal with complexities in their tax affairs.

This thesis examines the subject of certainty in fiscal and tax policy substance and design, tax lawmaking and the role of language in achieving certainty, clarity and consistency in tax law drafting, implementation, and tax administration, as it pertains to the upstream[[3]](#footnote-2) sector of the Nigerian petroleum industry.

Using primarily a combination of fiscal and tax policy reviews, black letter analysis of the law, review of judicial decisions and the comparative analysis of selected jurisdictions, this thesis advances five (5) main claims. First, is that although taxation is statute based, it reflects the social, economic, cultural values and aspirations of a people. Translating these values into an ascertainable fiscal policy, which then gets articulated and drafted into statute to be administered understandably and consistently, presents definite challenges, not helped by the frailties of language. Second, it seeks to establish that the principles and objectives that underpin taxation and tax systems, are not always clear or aligned, and concerning tax policy formulation and lawmaking, may affect or determine the level or degree of clarity, certainty, and consistency (CCC) in tax understanding, interpretation, implementation, and administration. Third, it subscribes to the view or position that language and communication present special challenges to articulating fiscal and tax policy and the drafting of tax statutes. Translating fiscal and tax policy into clear, certain, effective, and enforceable provisions presents peculiar challenges for legislative drafting, given the nature of language. Fourth, in terms of understanding taxing provisions, and the interpretation and implementation of taxation provisions, the tax authority, taxpayer and the courts or tribunals have a significant role to play in ascertaining certainty and clarity of tax provisions, by understanding fiscal policy and taxing principles. Fifth, it submits that to facilitate the consistent understanding, interpretation, and implementation of taxing provisions by all parties, the objective should be to keep statute language simple, and principle-guided, recognizing of course that this is a huge task. In any case, as much as possible, complexity should be avoided, and taxation should be principle guided.

Following the above propositions, some of the questions to be addressed include:

1. If certainty is so desirable, how, and why can uncertainty arise?
2. Can it be reduced or avoided, and should it always be reduced or avoided?
3. In a complex economic environment, such as the petroleum industry, is it perhaps unrealistic to expect tax certainty?
4. As there will always be room for a different understanding of policy objectives and interpretation of tax law provisions, is it feasible or possible to achieve certainty in fiscal and legislative substance and form, or should the objective be to secure clarity and consistency of application, thus indirectly achieving certainty? and
5. What is the significance of drafting competencies in translating policy into black letter law or statute, and how may this facilitate certainty of taxation language and statute, especially in upstream petroleum taxation in Nigeria.

**CHAPTER 1**

**INTRODUCTION**

# **THE CHALLENGE OF UNCERTAINTY IN THE NIGERIA UPSTREAM PETROLEUM TAXATION: Achieving certainty, clarity, consistency and simplicity, in upstream petroleum fiscal AND TAX policy and taxation laws.**

“You cannot be certain about uncertainty”— Frank Knight.[[4]](#footnote-3)

1. Background

This introductory chapter of the thesis presents the outline for the study of the subject of the challenge of certainty in fiscal and tax policy design and tax law-making, interpretation and administration in the Nigeria upstream petroleum taxation. The chapter defines the research objective, research question(s), the scope of research and the proposed methodology of study, as well as the significance of the study.

The chapter is in seven sections. Section 1.1 provides the background to the Nigeria petroleum industry. Section 1.2 discusses the key concepts and the challenge of certainty, clarity, consistency and simplicity in fiscal and tax policy formulation and tax law drafting, and the challenges as they present to Nigerian upstream petroleum taxation. This section also puts forward the argument that the inadequacy or absence of regular, structured, and sustained articulation and formulation of principle-guided fiscal and tax policy contribute to creating uncertainty in tax laws and administration. The role of language in achieving fiscal, tax policy and tax law certainty is examined. Section 1.3, then states the scope and rationale of the research, whilst section 1.4 discusses the research question and the working hypothesis for the study. Section 1.5 identifies and briefly explains the research methodology to be adopted. The significance and contribution of the study is discussed in section 1.6. The proposed chapter structure for the thesis is presented in section 1.7. The working recommendations for the study follow suit immediately.

The unifying theme for this study is the need to identify and interrogate the factors responsible for the uncertainty in upstream petroleum taxation in Nigeria. Also discussed are what actions may be required to achieve certainty, clarity, and consistency (CCC) in upstream petroleum tax administration. The generally accepted definition of the word “Uncertainty”[[5]](#footnote-4) is that it represents the lack of [certainty](https://en.wikipedia.org/wiki/Certainty), i.e. a state of limited knowledge where it is impossible to exactly describe the existing state, a future outcome, or more than one possible outcome. The subject of uncertainty in upstream petroleum taxation in Nigeria is very broad, but for the purpose of this study, we will examine the following factors:

(i) Ineffective or inadequate fiscal and tax policy formulation;

(ii) Ambiguity and gaps in legislation and case law;

(iii) Conflicting provisions of law resulting in different interpretation;

(iv) Piecemeal amendments of the statute and poor drafting;

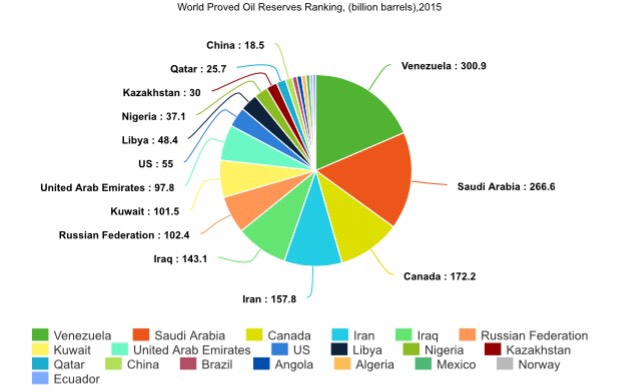
1. Lack of, or improper definition of words, concepts and principles in policy and law;
2. Administrative and judicial interpretation and their inefficiencies; and
3. The effects on business and the taxpayer.

Certainty or uncertainty in fiscal and tax policy, taxation law, tax administration and judicial interpretation, and in the economic system, emphasize and demonstrate the need for robust narratives and the proper application of principles and concepts. Furthermore, hopefully the study will highlight that the limits of certainty perhaps demonstrate the power of human judgment over artificial intelligence, as John Kay and Mervyn King opine in the book entitled ‘Radical Uncertainty-Decision Making Beyond the Numbers’[[6]](#footnote-5) **.**

* 1. **NIGERIA OIL AND GAS INDUSTRY**

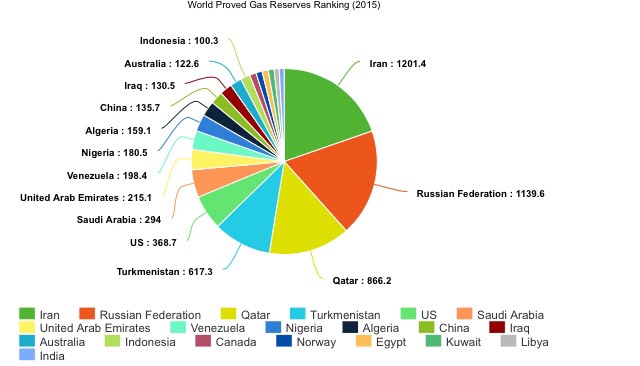
The Nigeria oil and gas industry plays a significant role in the Nigerian economy.[[7]](#footnote-6) Following the commercial discovery of oil in the small riverine village of Oloibiri in the present Bayelsa[[8]](#footnote-7) State of Nigeria, oil and gas operations have been carried out with the participation of major international oil companies (IOC’s), the Nigeria National Petroleum Corporation (NNPC), and more recently, indigenous Nigerian oil and gas companies (INOC’s). These companies operate under licences granted by the Federal government of Nigeria (FGN). [[9]](#footnote-8) As of 2018, Nigeria holds about 3.1% of world proven oil reserves and ranks 10th, and holds about 3% of proven gas reserves, and ranks 9th. in the world[[10]](#footnote-9).

**Figure 1 – Crude oil reserves.**



***Source: BP Statistical Review of World Energy, 2016.***

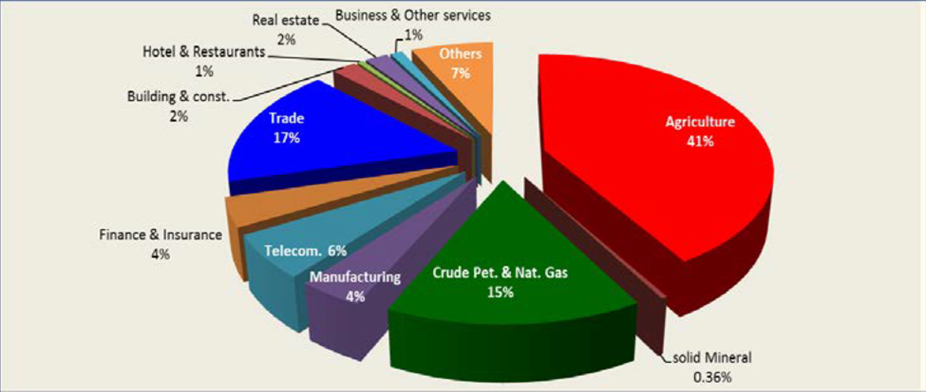
**Figure 2 - Gas reserves.**



***Source: BP Statistical Review of World Energy, 2016.***

The Nigerian oil and gas or petroleum industry has been the pivot on which the Nigerian economy has depended for many decades. It consists of exploration and production (upstream operations), midstream and downstream operations. The petroleum industry contributes significant revenues, including royalty and tax revenues to government finances, and this forms a major component of Nigeria’s gross domestic product (GDP).[[11]](#footnote-10) To date, the Nigerian economy remains highly import-dependent, consumption-driven, and undiversified. Crude Oil from upstream exploration and productions accounts for over 70% of exports,[[12]](#footnote-11) while the manufacturing sector accounts for less than one per cent of total exports.[[13]](#footnote-12) The oil and gas industry in Nigeria is 15% of the Nigerian economy, as compared to trade, which is 17% and the agricultural sector which makes up 41% of the economy.[[14]](#footnote-13) The oil and gas industry presently accounts for 90% of the country’s foreign exchange earnings and over 70% of its revenues.[[15]](#footnote-14) Figure 3 below is a pictorial description of the make-up of the Nigerian economy.

**Figure 3 - Make-up of the Nigerian economy**



***Source: National Bureau of Statistics Analysis: MPR Petroleum Fiscal Policy Team 2016.***

* + 1. **Nigeria’s Petroleum Fiscal Universe**

Notwithstanding the fact that petroleum revenues constitute a significant component of government finances, the fiscal, legislative and taxation framework appears to have only changed minimally in the past 50 years or more. Pre-independence in 1960, Nigeria operated largely the production and exportation of agricultural and mineral products such as palm oil, cocoa, groundnut, tin, columbite, gold, and the importation of manufactured goods[[16]](#footnote-15). Post-independence, Nigeria evolved a fixed to- medium-term development planning model (1962-1985), followed by the era of rolling plans (1990-1998). Under the 1999 Constitution, the government’s fiscal power is based on a three-tiered tax structure divided between the federal, state and local governments, each of which has different tax jurisdictions. The FG has exclusive fiscal control of oil and gas, and natural resources matters, but has not articulated and carried out in a structured and consistent manner very clear fiscal and tax policy objectives and a responsive legislative and regulatory regime for the petroleum and natural resources sector.

It can therefore be said that, in the Nigerian oil and gas fiscal universe, the main discernible policy objective of the FG, all through the years of oil and gas production, has been the maximization of oil revenues[[17]](#footnote-16). This relied essentially on high government take, with high and multiple petroleum profits tax (PPT) rates and a royalty regime based on terrain and production volumes. The FG’s broad macroeconomic goals were generally characterized by rising government expenditure without a corresponding increase in public revenue, and large accumulation of debt[[18]](#footnote-17). Even with oil production assuming a dominant position in the economy, and the continued flaring of gas, fiscal management merely transited from one primary product-based revenue to another, making the economy susceptible to fluctuations of the international market. The annual budget cycles also failed to address, or safeguard against the volatility of crude oil prices and to promote fiscal clarity, stability and sustainability of the industry.

The fiscal federalism under the 1999 Constitution was marked by the absence of appropriate fiscal rules, a proper finance management framework, ad-hoc policy intervention and arrangements resulting in policy inconsistencies and unclear fiscal objectives, and the incidence of different forms of taxes by the federating units, interacting with the primary oil and gas PPT and Royalty regime. The general corporate income tax regime which applied to the midstream and downstream petroleum sector also co-existed with the PPT and Royalty regime that applied to upstream petroleum operations. The ill-defined boundaries between the many tax regimes were therefore a source of ambiguity. The Royalty and PPT regime under the PPTA and the PA, was subsequently modified by the Memoranda of Understanding (MOU) which introduced certain fiscal incentives, guaranteed profits margins for the IOC’s, as well as exploration, and production allowances and bonuses. The MOU, though enforceable, was never enacted as a statute amending the fiscal and legislative regime. Also, indirect and transaction taxes, such as VAT etc which applied to the petroleum industry were generally neglected.

With the commencement of commercial production of petroleum in 1956 in Oloibiri in present day Rivers State of Nigeria, the petroleum fiscal arrangements have ranged from the concessionary regime in use up till 1969, to the Joint Operation Agreement (JOA) effective from 1973 and the Production Sharing contract (PSC) effective from 1993. Variants of the contractual arrangements include the risk service and sole risk contracting arrangements.

The concessionary arrangement required private oil companies and IOC’s to pay royalty on production and taxes based on profits. The Joint Operating Arrangement (JOA), otherwise called Joint Ventures (JV), was introduced with the enactment of the Petroleum Act 1969. Although the concessionary arrangement guaranteed revenue to the government through the payment of royalty and taxes, the national government lacked control of this vital national resource. On the other hand, the participation arrangement under the JVs recognised the rights of the national government with the grant of licences to the participating and operating companies. The grant of license, i.e. oil prospecting license (OPL), oil exploration license (OEL) and oil mining lease (OML), enhanced the sovereign proprietary rights of the FG, to exercise control over this vital natural resource since these licenses and leases were time-based. Also, the FG earned additional revenue from the payment of royalties, license fees, signature bonuses and equity contribution. Although the JVs enabled the government to exercise control and participate in the extraction and governance of the petroleum sector, there were still challenges relating to the government's failure to meet the cash calls when required. Specifically, there were budget delays and cuts in funding operations as NNPC, the national oil company (NOC) was unable to consistently fund its participating interests. While some JVs are still in operation in Nigeria, the issuance of new JVs ceased in 1973 when the PSC was first introduced. The Ashland PSC signed in 1973 offered some benefit to the FG, such as a duration of 20 years with five years extension, which was not available in JVs, title to the petroleum at well-head unlike acreages in JVs, risks and revenue sharing as well as recruitment and training of Nigerians by the contractor. However, despite the benefits of production contracting and sharing arrangement, the 1973 PSC experienced some challenges. Moreso and due to the inability of the FG to meet its funding obligations to the JV’s and the pressing need to increase investment in the sector, achieve production quotas, increase reserves, as well as the declining revenues from crude sales due to fluctuating oil prices in the international oil market, extensive engagement and discussions were held with investing IOC’s and stakeholders and the new PSC’s were signed in the 1993 licensing rounds for the first set of deep offshore and inland basin acreages, and revised in 1999. The Deep Offshore and Inland Basin Production Sharing Contracts Act No. 9 was enacted in 1999, and it amended the subsisting petroleum profit tax (PPT) and Royalty regime in several respects, including the provisions on pricing, assessment and charging tax, royalties, and windfall profits, but remained unclear in gas development and taxation as well as on abandonment, etc.

The co-existence of the many fiscal arrangements and their impact on the royalty and tax system, and the interaction of the primary and subsidiary taxes, with the multiple taxes, levies, and charges on petroleum operation all added to creating the lack of clarity, uncertainty and instability in the petroleum fiscal and tax landscape, particularly for upstream petroleum taxation. Gas development and taxation also lagged with the problem of gas flaring. Following a comprehensive review of the fiscal, tax, commercial, legislative and regulatory framework of the petroleum industry, the Petroleum Industry Bill (PIB) was presented to the National assembly (NA), in 2008. The PIB suffered several delays and was to be followed by the 2018 Petroleum Industry Fiscal Bill (PIFB), which finally resulted in the enactment of the Petroleum Industry Act, 2021, examined in detail in chapter 9 of this thesis.

In summary, the various policy interventions and fiscal and regulatory arrangements for the operation of the PPT and Royalty regime by the FG were designed to enhance revenue generation and government take from the industry. The co-existence of the various fiscal arrangements and various legislative and multi regulatory regimes and agencies, with the operation of the PSC regime along with the PPT and Royalty regime interacting with other taxes and multiple levies and charges further raised several contentious issues which added to the lack of clarity and the confusing fiscal universe and tax landscape.

* + 1. **Legislative and Regulatory framework**

The legislative and regulatory framework consists of principal and subsidiary statutes for upstream operations taxation and regulation. The principal taxing statutes are the old Petroleum Profit Tax Act (PPTA) 1959, and the general Corporate Income Tax Act (CITA), which interact with several subsidiary and special purpose Tax statutes, thus presenting a confusing landscape. The interaction of the principal legislation and several subsidiary legislations, agreements, and arrangements, require some streamlining and comprehensive review[[19]](#footnote-18). These trends are examined specifically in chapters 2, 3 & 4 of the thesis. The Petroleum Act (PA) 1968, and the Petroleum Drilling and Regulations 1968 form the regulatory framework for upstream petroleum operations. The Regulations adopt a licensing regime based on concessions and risk service arrangement as amended from time to time.

The licensing framework for petroleum operations under the PA, consisted of oil prospecting licences (OPL), oil exploration (OEL) and oil mining leases (OML), The Joint Operating Agreement (JOA), and the PSC and risk service contracts, farm-in arrangements, and the discretionary use of project specific fiscal incentives and agreements, examined in detail in chapters 2, 3 & 4 of the thesis, were the predominant structures and framework for petroleum operations, until the changes introduced under the Petroleum Industry Act (PIA), 2021.

The regulation of petroleum operations adopts a multi-agency approach, which creates overlaps in functions and confusion in implementation. The Statutes and Regulations are old, and the fiscal arrangements and agreements are ad-hoc, discretionary and in many cases project specific and reactive in approach. The amendments to the legislation are generally reactive and piece-meal, with inadequately articulated or defined policy objectives. This approach has contributed to the general lack of clarity and certainty in terms of fiscal policy and tax law.

The existence of multiple regimes and the absence of clearly defined fiscal and tax objectives and processes or structures to facilitate the sustained evolution and development of the fiscal and legislative universe meant that the fiscal and tax landscape was not responsive and competitive. Tax liability could not in many cases be accurately determined, and tax administration and compliance were sub-optimal. Also, the concession and the contractual arrangements, as well as the regulatory framework in place, preserved the status of the Nigerian National Petroleum Corporation (NNPC) as both operator and regulator, on behalf of the FG. NNPC, however, lacked the technical competence and capacity to operate or regulate the industry or effectively deal with the IOCs, or articulate a comprehensive and responsive fiscal and tax policy for the oil and gas industry.

The following observation has been made on the Nigerian petroleum fiscal and tax legislative regime:

“The field is populated by a winding mass of legislations, (both principal and subsidiary); directives from government and numerous parastatals, and many contractual and quasi-contractual arrangements, and the petroleum profits taxation system is a hopeless jumble, which requires an objective appraisal and therefore a reform that would ensure transparency and accountability in the interest of all stakeholders.”[[20]](#footnote-19)

There are interesting findings from studies carried out on the Nigerian petroleum system. The studies suggest that Nigeria’s petroleum tax regime is predicated upon a desire to capture as much revenue as possible for the government. One study has indicated that the implementation processes of the Nigeria petroleum tax system are fundamentally weak and require further improvement; and that the Nigeria petroleum tax system lacks the capacity for timely review, although it is shown to be sensitive to changes in tax regulations across oil-producing countries.[[21]](#footnote-20)

**1.2 THE CHALLENGE OF UNCERTAINTY IN NIGERIAN UPSTREAM PETROLEUM TAXATION**

Tax certainty[[22]](#footnote-21) is a key component of a good tax system. It helps to reconcile the expectations of taxpayers and governments and provides a tax environment conducive to growth and foreign direct investment. Achieving tax certainty in developed and developing countries is more difficult now than in the past since there is a climate of mistrust between society and multinational enterprises (MNEs) which has led to an environment of mutual suspicion between the wider public, business and governments over tax policy and implementation. Nevertheless, in the long term, it is in the interests of both government and business to minimize as far as possible tax uncertainty[[23]](#footnote-22).

Clarity in tax policy, laws and regulations essentially means that tax laws and regulations must be comprehensible to the taxpayer and the tax authority; they must be as simple as possible (given other goals of tax policy) as well as unambiguous and certain to both the taxpayer and the tax administrator. This implies that taxpayers can avoid a maze of taxes, forms and filing requirements. A simpler tax system helps taxpayers better understand the system and reduces the costs of compliance. Commentators and legislators alike extol the virtues of a ‘simple tax system’.[[24]](#footnote-23) However, some studies and commentaries have suggested that the complexity of petroleum operations and the petroleum industry informs the complexity of its fiscal and tax system[[25]](#footnote-24).

In a similar vein, consistency or transparency in the tax system means that taxpayers and tax administrators, as well as others, can easily find information about the tax system and how tax money is used in tax administration. This is important for the tax authority and the taxpayer. Therefore, assuming a certain level of revenue that needs to be raised by the government, and which depends on the broader economic and fiscal policies of the country concerned, several broad tax policy considerations have traditionally guided the development of any taxation system. These include neutrality, efficiency, certainty and simplicity, effectiveness, and fairness, as well as flexibility[[26]](#footnote-25).

It will be argued in this study that the incidence of ambiguity, gaps and inconsistency in understanding and interpretation of statutory provisions by taxpayers, the tax authority and in some cases, the courts, may be due to the inconsistent application of these key principles in fiscal policy design and tax law-making and legislative drafting. Furthermore, since language is crucial to communication, and lawmakers characteristically use language to make law, and since law must provide for the authoritative resolution of disputes, the effects of the use of language are of special importance. [[27]](#footnote-26) It will be argued that words and concepts play a critical role in fiscal policy design and tax lawmaking. We will therefore seek to understand the extent to which words, and the absence of well-defined concepts and principles, have affected fiscal policy and tax law making in upstream petroleum taxation in Nigeria. This study will investigate the extent to which drafting competences have affected or contributed to creating uncertainties in taxing legislation in the Nigerian upstream oil and gas industry.

Fuller’s[[28]](#footnote-27) eight principles and key requirements for legal certainty come into focus. He states that legal certainty demands that laws be published, be not retroactive, that they be clear and consistent, do not impose duties that are impossible to perform or are modified frequently, and that government action be in accordance with general laws which are laid down beforehand. Furthermore, in contemporary scholarship, legal certainty is regarded as a ‘principle of proper law-making’. In this regard, the importance of language and its role in effective communication has been highlighted. In terms of formulating and articulating policy, drafting tax laws, and interpreting the same, Anthony Burgess has described language as:

“…a system of signs, arbitrary in form and only to be understood in terms of the whole system which is a given language. Language…can be understood only in relation to each other.”[[29]](#footnote-28)

It has been argued that language may be contrasted with speech, which is the actual use at a time of local symbols by an individual to convey information or express some other image from the mind of the speaker.[[30]](#footnote-29) Language is the system or the code. It goes beyond the individual society and is essentially a social institution. However, the verbal images stored away in the minds of the individual members of society are substantially the same but cannot communicate on their own. The symbols are arbitrary in that they have no relationship to what they signify, and yet they are conventional in the sense that they are accepted by the speech community.[[31]](#footnote-30)

In another very incisive analysis of how language is used in communication, Peter F Strawson[[32]](#footnote-31) distinguished between expression, the utterance of an expression and the use of an expression. He asserts that the meaning of an expression is not the set of things or the single thing it may correctly be used to refer to, but; “the meaning is the set of rules, habits, and conventions for its use in referring.”

From that view of meaning or language, one can make several deductions that are relevant to writing legislation in general, and more specifically, as it applies to taxation of upstream petroleum in Nigeria. One is that meaning is slippery and depends on so many factors in addition to the words in which someone has tried to embody it. For fiscal policy formulation and tax law-making and tax law drafting, clarity and certainty demand that the intended meaning and effect is well articulated, and principle guided. Secondly, taxpayers, tax authorities and administrators, as well as judges, should have considerable latitude in interpreting statutes. Also, words used in statutes must as much as possible not give room for uncertainties or ambiguities of interpretation. James Boyd White, for example, has attempted to make the connection and has disputed the representational theory of language, whilst asserting an expansive view of statutory interpretation.[[33]](#footnote-32) It may be observed that an expansive view, without more, and which goes beyond using technically defined, and industry accepted meaning of terms, etc. may conflict with the strict literal interpretation of tax statute.

It is not in doubt that legislative drafting competency[[34]](#footnote-33) is a key requirement and has practical relevance for achieving clarity and certainty in the fiscal regime and taxation laws. Drafters are required to convey the intended meaning with the greatest possible precision. It has been argued that a drafter will do much better by trying to achieve accuracy than by trying to achieve clarity.[[35]](#footnote-34) Jack Stark aptly asserts:

“A clear statute that does not fulfil…intent is a disaster, not an accomplishment. Conversely, a statute that fulfils its purpose, even if a reader must puzzle over it a bit, is a success. Instantaneous comprehension of statutes, although desirable, is unnecessary, and when it is achieved at the expense of accuracy, it is counterproductive.”[[36]](#footnote-35)

It has been asserted that tax certainty can only be achieved when the right balance is struck between clarity of taxing provisions, facilitating compliance, as well as identifying, and curbing aggressive tax planning[[37]](#footnote-36). In addition to the above highlighted principles, we shall briefly interrogate the following points, since these affect upstream petroleum taxation in Nigeria:

1. Fiscal federalism under the 1999 Constitution,
2. Inadequate fiscal policy design,
3. Unclear taxing provisions in the taxing Act, and the interaction of principal and subsidiary legislation in the petroleum industry.
4. Retroactive changes,
5. Sectoral fiscal incentives requiring special tax treatment,
6. Tax administrative process and judicial interpretation, and
7. Judicial intervention and precedents.

(1). Under the 1999 Constitution, ownership and control of all oil and gas (O&G) resources in Nigeria reside with the State. The State here refers to the Federal government of Nigeria (FGN). All activities to search for, win and dispose of crude oil and gas discovered and produced in Nigeria are carried out under rights and licenses granted by the FGN. Petroleum is listed under the Exclusive Legislative List,[[38]](#footnote-37) and the Federal government (FG), through the National Assembly (NA), is empowered to legislate on matters contained in the exclusive legislative list (“Exclusive Legislative List”) of the Constitution, to the exclusion of the State Houses of Assembly. The FG also has exclusive taxing powers on energy matters, as well as concurrent legislative powers with the States on matters in the Concurrent List of the Constitution. The exercise of these powers has significant implications for both direct and indirect taxation of transactions in the upstream petroleum sector. The allocation of exclusive fiscal taxing rights over petroleum to FG creates a fiscal imbalance in the federal system as operated under the 1999 Constitution. The practical consequence is that of fiscal incursions by the Federating States in the exercise of fiscal powers, resulting in the incidence of multiple taxes and levies. The actions of the States create uncertainties and the inconsistent application of tax statutes.

(2). The absence of sustained and well-articulated fiscal policy[[39]](#footnote-38) and tax law formulation or review is another major source of uncertainty in the upstream tax system. Only recently,[[40]](#footnote-39) has there been an attempt to articulate a comprehensive, clear commercial and fiscal policy for tax law change in the Nigeria petroleum industry. Unfortunately, this initiative has been prolonged and has affected the translation of fiscal and tax policy into enforceable statutes. This situation further aggravated the uncertainty in the PPTA regime of the country.

(3). Experience has shown that the PPTA, as amended, and the other relevant subsidiary legislation have some conflicting and unclear provisions.[[41]](#footnote-40) The PPTA has operated alongside subsidiary legislation, Memoranda of Understanding (MOU), Agreements and the Production Sharing Contracts (PSC). The fiscal incentives and commercial concessions granted either to specific projects and the PSCs’ terms were subsequently enacted into law, amending the PPTA and CITA. With the benefit of hindsight, this approach may have added to the uncertainties in the application of the PPTA. Perhaps, a more prudent approach would have been to enact statutes, with clear fiscal terms, guarantees and sunset clauses. The development of the Nigeria Liquefied Natural Gas (NLNG) project with the enactment of the Nigeria LNG Act[[42]](#footnote-41)is one such example.

At the other end of the spectrum is the enactment of the PSC Act. The PSC Act amended the PPTA and introduced into the PPT regime inadequately defined PSC concepts, such as; “contract area”, “investment tax credit/allowance”, “sole cost”, “cost recovery”, “royalty oil”, “tax oil” and “profit oil,” etc. This approach increased the grey areas in the PPTA and presented quite a few interpretation and implementation issues to the upstream PPT regime. The PSC fiscal incentives introduced by the amendment to the PPTA lacked in some respects adequate enforcement framework, with scope for aggressive tax planning. A typical case in point under the PSC relates to pricing, royalty rate and law review under s.16 of the PSC Act.[[43]](#footnote-42) Section.16 (1) & (2) of the PSC set a price threshold, which once attained, should trigger a review of government fiscal take. It also stipulated a timeline for amending the PSC Act. The process required for activating the review is not defined in the PSC Act, and the provision was never really activated and applied, thus resulting in revenue loss to government. Several issues emanating from improperly stated concepts, and perhaps poorly articulated PSC incentives have resulted in contentious issues that have gone to arbitration and the Tax Appeal Tribunal (TAT), as examined later in chapter 4 of the thesis. To state the obvious, some of the TAT decisions have also been conflicting due primarily to the misalignment of fiscal objectives and ill-defined concepts and terms.

Recently, some aggrieved States in the Federation sought and obtained a consent judgement from the Supreme Court (SC), on the implication of the provisions of s.16 of the PSC Act. The FGN has also belatedly caused the amendment of s.16 of the PSC Act in 2019[[44]](#footnote-43), to address the issues of price determination, the applicable royalty rate and the absence of legislative preview and amendment process. The FG, however, failed to engage with the IOC’s and other relevant stakeholders and the amendment does not specify a well-defined law review and change process.

(4). The special sectoral gas fiscal incentives granted by the FG under the Associated Gas Framework Agreement (AGFA), and the Non-Associated Gas Framework Agreement is another area of misalignment of fiscal objectives and lack of clarity of terms. The gas fiscal incentives were incorporated into law with the respective amendments of the PPTA and CITA.[[45]](#footnote-44) In particular, and by the amendment, gas capital cost is expensed against oil capital cost. Given the different tax rates for oil and gas (85% as against 30%), this treatment has given rise to interpretation and implementation issues, thus resulting in the tax authority and the taxpayer taking different positions, and conflicting decisions by the courts. The TAT had ruled that Agip gas income is liable to tax under CITA, and the dividends paid out of its gas profits are subject to WHT as provided under section 80 an 9(1) (c) of CITA, although Agip is engaged in petroleum operations, which is subject to PPTA[[46]](#footnote-45).

(5). Retroactive changes should be avoided, as this can create uncertainty and be harmful to investment.[[47]](#footnote-46) It is critical to distinguish between “retroactivity” and “tax stabilization”.[[48]](#footnote-47) True “retroactivity” would mean changes to tax laws that are applied to past tax years, as opposed to changes in the law that apply to future years. The issue then, is whether changes applied to past tax years would generate “uncertainty” in the sense of causing taxpayers in general to distrust the future actions of government—much in the way that nationalization of sectors or companies can do. Generally, changes in tax rules should as much as possible be implemented prospectively, although there have been attempts in the past to effect changes retroactively in the Nigeria petroleum regime[[49]](#footnote-48).

(6). The tax administrative process should be well defined. It is not in doubt that some uncertainty in tax matters is an inevitable consequence of the wider uncertainties which governments must cope with in addressing their economic and social objectives. It is therefore important for governments to have sufficient scope to manage the tax system, and to respond in a structured and predictable way to new challenges such as an economic slowdown, a larger budget deficit, or increased inequality. To state the obvious, changes are necessary, but the more frequent the changes,[[50]](#footnote-49) the more difficult it will be for the tax authority to give enough advanced notification and for business to assimilate all the modifications introduced in the tax system.

(7). Also, judicial intervention can achieve certainty in interpretation or inadvertently create uncertainty. This situation may arise from unclear fiscal policy, unclear or inadequate understanding of statutory provisions, incompetent or poor drafting and the language challenge. Also, confusion or uncertainty in the judicial process or jurisprudence may result in lack of certainty in judicial interpretation. The confusing stance and the conflicting decisions on the issue of the tax jurisdiction of the Tax Appeal Tribunal (TAT) vis-à-vis the Federal High Court (FHC) was a classic case of uncertainty in the judicial process. This was as a result of the conflicting interpretation of section 251[[51]](#footnote-50) of the 1999 Constitution, by the FHC. The two conflicting decisions of the FHC on the matter in *CNOOC Exploration v. FIRS,*[[52]](#footnote-51) and in *TSKJ II Construces v. FIRS*,[[53]](#footnote-52) were later over-turned.[[54]](#footnote-53) Both cases are further discussed in chapter 2 of this thesis.

In effect, faulty fiscal design; the interaction of the principal and subsidiary legislation; the introduction of new concepts and principles into existing legislation, as well as the sectoral and special incentives have added to the uncertainty in the system. Also, unclear provisions and inadequate and the absence of definitions of words, key concepts and terms all contribute to the uncertainty in statutes.[[55]](#footnote-54) The process for implementing the relevant changes to upstream petroleum taxation as seen with the introduction of new PSC concepts into the PPT regime is also critical to managing the level of uncertainty produced. For example, taxpayers experience considerable uncertainty when proposed changes are announced but are not legislated promptly, or the effective date of the legislation stated clearly. There can be very good policy reasons for the swift implementation of some tax changes with minimal pre-announcement. This is especially so when the intention is to address, or not to create avoidance possibilities, such as, to preempt the artificial shifting of income between tax periods.

Even the best designed and drafted tax laws are not capable of anticipating every new product, service or business model and every taxpayer transaction and structure, particularly those of an aggressive nature or those that are otherwise undertaken for tax avoidance purposes. But unnecessarily difficult or poorly organized tax provisions, where they fail to give a clear effect to the stated policy objective, can be a source of uncertainty. Some degree of complexity is inevitably needed to cover possible circumstances and considerations sufficiently broadly to lead to a reasonable certainty. However, clear, coherent legislation does not guarantee tax certainty if it is not accompanied by a coherent, fair, and efficient implementation. Ineffective and unpredictable implementation, where there is a gap between the tax legislation and its application is likely to increase uncertainty. Also, corruption is another source of uncertainty, although corruption is not necessarily a cause of tax uncertainty. However, corruption can both exploit and exacerbate it. In some cases, the consequences of corruption may be a reduction in tax uncertainty, if people must buy certainty.

* 1. **SCOPE AND RATIONALE OF THE RESEARCH**

Taxation is a product of economic, political, socio-cultural, and environmental considerations. These considerations drive fiscal policy formulation. Translating policy into clear and certain tax law, presents challenges for policymakers and legislative draftsmen. This study proposes to examine the degree to which certainty and clarity in fiscal policy design and articulation in the Nigeria upstream petroleum sector directly or indirectly impact on certainty or lack of it in the taxation statutes and administration. Furthermore, the study will examine the implications of the Nigerian constitutional framework, the absence of principle-guided fiscal and tax policy and tax lawmaking, as well as the degree to which administrative and judicial processes, impact certainty in upstream petroleum taxation in Nigeria.

Uncertainty in taxing legislation has been variously defined, and studies from the International Monetary Fund (IMF) and Organization for Economic Co-operation and Development (OECD), define uncertainty in taxing legislation as ‘ambiguous areas in tax policy and the tax laws, where taxpayers and tax administrators (and others) might have reasonable but differing interpretations of what the tax laws require.’[[56]](#footnote-55) Some of the ambiguities in tax laws as captured in the IMF/OECD report include;

(a) ambiguities arising from policy confusion or lack of clarity in policy objectives;[[57]](#footnote-56)

(b) ambiguities in the precise meaning of statutory language;[[58]](#footnote-57)

(c) ambiguities in the application of the law to specific factual situations; and

(d) ambiguities in the type of evidence sufficient to establish the facts.[[59]](#footnote-58)

This study proposes to identify and analyze these ambiguities in the Nigeria upstream petroleum taxation law and practice. It will be argued that uncertainties in fiscal policy and the language of taxing statutes are capable of limiting the revenue maximization function of the relevant tax by distorting the intended public policy objectives through limited compliance by taxpayers and ineffective enforcement by the tax authorities.[[60]](#footnote-59) Tax uncertainty can therefore, occasion negative economic growth,[[61]](#footnote-60) investment depletion and stagnated investment climate in sectors and countries where uncertainty persists.[[62]](#footnote-61) In addition to being detrimental to the investment climate, lack of legal certainty can have liability implications for the Government of Nigeria under international investment law as it arguably breaches the stable and predictable legal environment a foreign investor legitimately expects from a host state.[[63]](#footnote-62)

Moreover, a significant litigation risk (again founded on the violation of the principle of legitimate expectation) exists with both domestic and foreign investors who are key players in the petroleum industry. In effect, in addition to the domestic tax law liability implication, there is an international tax law liability perspective that will require some further analysis. This research will examine the topical issues and areas of uncertainty in fiscal policy and tax statutes in the relevant chapters[[64]](#footnote-63) dealing with policy design, tax law and case law, tax administration and tax adjudication.

Whether a piece of law is, in fact, good law or bad law is not the primary objective of this research. Rather, the research seeks to investigate how and to what extent clarity in objectives, principles and the accuracy in language contribute to certainty in the tax terms or provisions. It is necessary to weigh the need for certainty and clarity against other important tax policy objectives. While tax certainty can have positive effects on economic activity, it is only one of several important objectives that will need to be balanced by policymakers.

# **Research Question and Hypothesis**

The research proposition for this study is that the failure of principle-guided fiscal and tax policy formulation, and clear tax law drafting, directly or indirectly impact the certainty and clarity of taxing terms and the understanding, interpretation, and consistent administration of upstream petroleum taxation in Nigeria.

In the light of the above hypothesis, and since certainty in the legal and tax system has always functioned as normative ideals, both at the national and transnational level, and though it has not always been fully realized, the degree to which language and drafting competency can facilitate and affect the ideal becomes important. This raises the question, to what extent or to what degree statutory language can be or should be, simplified [[65]](#footnote-64) to achieve the objective(s). The study will therefore carry out a survey of the role of ineffective governance, structured fiscal policy reform, and the absence of regular review or tax law reform in achieving tax policy and tax law certainty in upstream petroleum profits taxation in Nigeria.

The fiscal regime for the oil and gas industry is usually country-specific and there are generally four factors that impact its design: the extent of oil or energy dependence; the stage of development of the oil industry; the government’s financial position; and state participation in the oil sector[[66]](#footnote-65). These factors shape the formulation of petroleum fiscal regimes in all countries.[[67]](#footnote-66) However, it is crucial in ensuring that the national government maximizes the generation of tax revenue and that the regime does not deter foreign oil companies from investing in production activities[[68]](#footnote-67).

With the ongoing fiscal reform in the Nigerian oil and gas industry, which has been described by some writers as ‘old wine in new bottle,’[[69]](#footnote-68) the research will examine to what extent the draft fiscal policies and tax principles have addressed the identified uncertainties in the upstream petroleum taxation and royalty regime. Additionally, the study will assess whether the ongoing reform of the Nigerian petroleum fiscal regime and the proposed amendments to relevant tax legislation[[70]](#footnote-69), achieve the right balance between maximizing the generation of tax revenue and attracting foreign investment[[71]](#footnote-70)in the sector. Also, the study will assess to what extent certainty of legislative terms pass tests such as efficiency, neutrality, equity, risk-sharing, stability, clarity, and consistency, if not simplicity in fiscal policy and legislation.[[72]](#footnote-71)

# **Research Methodology**

The literature review and studies on tax and legal certainty indicate that the outcomes of any given fiscal and tax regime may be measured in terms of its performance and robustness against the set of criteria or principles of efficiency, neutrality, equity, risk-sharing, stability, clarity, and certainty. This research will focus on direct corporate income or profit tax in the upstream petroleum taxation in Nigeria. It will examine the extent to which principle-driven fiscal policy underpins the existing upstream petroleum profits taxing legislation. Secondly, it will examine to what extent the principle-guided fiscal policies have been accurately translated into taxing statutory provisions. The approach is to combine both qualitative and quantitative methodologies, although this may also involve some doctrinal analysis.

In addition, it is proposed to carry out a comparative analysis of the process of fiscal policy formulation and tax law-making of the UK, which has a unitary form of government, as well as sharing a common law heritage with Nigeria. Canada, the second comparator country operates a federal system of government like Nigeria. It has an evolving and effective petroleum fiscal and taxing regime. The use of English language in both countries is also important. Specifically, the following activities and tools will be applied in the study:

1. Surveys and in-depth interviews – a questionnaire has been administered to officials in FIRS, MPR, MOF, etc. Targeted as well as structured interviews were conducted of officials engaged in fiscal policymaking in MOF and MPR, and lawmakers and drafters in the National Assembly (NA) and the Ministry of Justice (MOJ) etc.
2. Comparative research –available literature was reviewed on the United Kingdom and Canada around fiscal policy design and legislative drafting.
3. Expert studies and local and international experts were engaged based on the literature review. There are studies and reports analyzed to ascertain the trends relevant for our case study.
4. Examination of the institutional terrain – this involved carrying out targeted engagement and consultation with FIRS officials, professional tax and accounting bodies and research institutions to access the expert views and body of knowledge.
5. Black letter law, policy and case law analysis - This involved interpretation of policy, existing laws, judicial decisions, agreements and guidelines as they pertain to upstream petroleum taxation in Nigeria, the UK and Canada respectively. This included the review of specific ambiguous provisions in the tax and royalty regime provision of the PPTA. It also involved the analysis of tax cases to provide insight on the relationship of clear fiscal and tax policy formulation, language and drafting skills as well as expertise of tax officials to give informed guidance and administer tax provisions consistently.

The research has examined the language challenge, and the technical drafting competency issues observed in policy formulation and tax law-making, interpretation and administration of PPTA and CITA. Interviews and surveys of tax stakeholders in the industry, officials, and administrators of the relevant departments provided insight and useful guidance on actual practices and problems.[[73]](#footnote-72)

The comparative analysis of the fiscal policy and law-making process of the United Kingdom (UK),[[74]](#footnote-73) and Canada, has a view to identify best practices from an evolving and a mature fiscal regime perspective. This comparative review entailed doing the following:

1. Review of policy documents and primary petroleum taxing legislation,
2. Review of institutional procedures for formulating policy and law;
3. Comparing the above (1&2) criteria on each jurisdiction to the case study.
4. Examination of similarities and differences.
5. Assessment of best practice.

Relevant OECD and World Bank fiscal studies and reports were reviewed for the body of knowledge and recommendations for best practice, transparency, and efficiency of the fiscal regime.

* 1. **CONTEXT AND CONTRIBUTION TO SCHOLARSHIP**

Experience has shown that resolving uncertainties in tax systems comes with a significant cost. It should not be an option. Therefore, this study will attempt to understand the main drivers of uncertainty in the upstream petroleum taxation system in Nigeria. Moreover, the importance of providing greater tax certainty to taxpayers to support trade, investment and economic growth has become a shared priority of governments and businesses. ‘The G20 Hangzhou Community’ report states:

“We emphasize the effectiveness of tax policy tools in supply-side structural reform for promoting … the benefits of tax certainty to promote investment and trade and ask the OECD and IMF to continue working on … tax certainty”.[[75]](#footnote-74)

From the comparative analysis of the process of fiscal policy formulation and tax law-making of the selected jurisdictions; the quantitative and qualitative reviews and evaluation of survey and interview data, as well as OECD and IMF studies, the study recommends measures for achieving the following:

1. The structured and regular engagement with business and other stakeholders both in policy formulation and drafting of legislation, to ensure tax policy makers and tax administrations are working together to formulate new policies;
2. The establishment of transparent and open consultation processes, to enable input from a wide variety of stakeholders before policy and legislation are finalized;
3. The identification of best practices and learnings from the selected countries to enhance fiscal policy and tax law-making;
4. Identification of the skills sets required for policy formulation, legislative drafting and consistent interpretation and implementation of taxing provisions; and
5. Recommended guidelines for drafting clear and unambiguous legislation, e.g. all legislation can be formalized in a draft form and put through a process of consultation to ensure the purpose of specific sections of the law are clearly stated so that taxpayers and the courts have a clear basis for interpreting the more detailed and technical provisions.

# **Chapter Structure**

The thesis adopts the following chapter structure.

**Chapter 1 – Introduction:** This chapter provides an overview of the issues of certainty, the scope of research and the research question and methodology to be adopted.

**Chapter 2 - The Nigerian Tax System:** This chapter traces the historical evolution, the structure of the Nigerian tax system, the tax administration and tax dispute adjudicating process, as well as the challenge and rationale of reform of the system.

**Chapter 3 - Taxation of Petroleum Operations:** This chapter examines the taxation of petroleum operations as a lead up to addressing the issues of uncertainty in fiscal policy and law in chapters 4 and 5.

**Chapter 4** – **Upstream Petroleum Operations Taxation and Tax Legislative Uncertainty**:

The topical areas and issues of uncertainty and contention in the principal Nigerian upstream petroleum profit tax laws will be critically analyzed. This chapter will also highlight the implications of the absence of a sustained structured policy and law review and the ad-hoc and piecemeal fiscal and legislative amendments for petroleum profits taxation in Nigeria.

**Chapter 5 – Policy and Tax Law Making in the Nigeria Upstream Petroleum Industry:**

This chapterreviews the evolution of fiscal and tax policy in the Nigeria petroleum Industry, and the issues of lack of fiscal policy clarity. It also addresses the process and challenge of tax law making and the need for competent legislative drafting for achieving tax legislative certainty.

**Chapter 6 – Survey of Stakeholders in the Nigerian Upstream Petroleum Industry:**

This chapter deals with the survey and analysis of the field survey/interview and data collected. The critical quantitative and qualitative review of the research findings identify factors contributing to creating the uncertainty in the Nigeria upstream tax system. Relevant conclusions will be drawn from the survey and inform some of the recommendations in chapters 9 and 10.

**Chapter 7** - **Fiscal Policy and Tax Law Making in the United Kingdom Petroleum Industry:**

This chapter examines the process of fiscal policy design and tax law drafting and how certainty, clarity, and stability is achieved in the UK petroleum regulatory and tax system as compared to the Nigerian upstream petroleum industry. The learning for the Nigeria upstream petroleum legislative and tax system will also be highlighted.

**Chapter** 8 –**Fiscal Policy and Tax Law making in the Canadian Petroleum Industry-**

This chapter examines the process of fiscal policy design and tax law making and how certainty, clarity, and stability is achieved in the Canadian petroleum and gas regulatory and tax system and relevant learnings for the Nigerian upstream petroleum legislative and tax system.

**Chapter 9**. – **The Nigeria Petroleum Industry Act – A New Framework**:

This chapter examines the fiscal, regulatory, royalty and tax changes introduced by the Petroleum Industry Act enacted in August 2021, following the almost two decades of comprehensive review of the Nigerian petroleum regulatory regime and tax system. It addresses the degree to which the PIA response has achieved the required clarity, certainty, and predictability in understanding and consistent fiscal, legislative and administrative treatment of several aspects of upstream petroleum taxation in Nigeria, and what gaps remains.

**Chapter 10 – Conclusion:**

Tax certainty aims at the stabilization of expectations of both taxpayers, and governments. It refers to the creation and maintenance of a stable regulatory and policy and legislative regime for tax compliance and administration. This fiscal and tax legislative regime requires clear language and well-defined terms, concepts, and words in legislation. It entails sustained engagement, and reviews of the substance, nature, and form of policy and legislation, as well as the setting of principle-driven tax objectives which are consistently understood and translated into simple and enforceable tax legislation. It also requires a transparent dispute resolution process and an independent judiciary to achieve a stable tax system. The existence of these attributes engenders trust, efficiency, and fairness to all parties. Tax legislative certainty stands for predictability of tax regimes, and the certainty that taxpayers will be appropriately taxed.

**1.8 RECOMMENDATION**

It is important that the legal and tax system permit those subject to the law to regulate their conduct with certainty, and as well protect those subject to the law from arbitrary use of state power. It is equally important that tax administrators and public and judicial officers have a clear understanding of their authority under the law and the boundaries of the law as they administer and exercise statutory authority on well-defined liabilities and rights. Legal certainty, therefore, as a principle in national and international law, holds that the law must provide those subject to it with the ability to regulate their conduct.[[76]](#footnote-75) The design of effective fiscal policies assumes that there are institutions and good governance in place. Both are vital to maximizing the generation of tax revenue in oil-producing countries. Without these institutions and good governance mechanisms to facilitate the administration of these policies, the State cannot benefit from them.[[77]](#footnote-76)

The Update on Tax Certainty Report, 2018 prepared by the International Monetary Fund (IMF) and the OECD, for the G20 Finance Ministers and Central Bank Governors, identifies several practical tools for enhancing tax certainty in G20 and OECD countries. These include issues in tax policy design and legislation as well as issues in tax administration (such as avoiding and resolving disputes). More specifically, the following list of possible areas of enhancement were identified:[[78]](#footnote-77)

1. Addressing complexity;
2. Improving clarity;
3. Anti-avoidance rules;
4. Improved withholding tax collections and treaty relief procedures;
5. Effective domestic dispute resolution regimes;
6. Tax administration and programs for resolving international tax disputes;
7. Mandatory disclosure;
8. Advance pricing agreements;
9. Simultaneous and joint audits;
10. Mutual Agreement procedure; and arbitration.

A responsive, progressive, principle-guided fiscal policy and tax law formulation and development, which achieves tax certainty, effective tax administration and cost efficiency for both the taxpayer and the tax authority, enhancing consistency in judicial decisions, requires synergy between fiscal policy development, tax lawmaking and the economic policies of the government.[[79]](#footnote-78) The attainment of these goals will support the role of the government in providing public services, re-distributing income and the implementation of other fiscal policy concerns, for sustained growth as well as encouraging desirable socio-economic behaviour[[80]](#footnote-79).

This will entail and require regular consultation and engagement of all stakeholders before and during the process of policy formulation and drafting legislation, to ensure inputs are captured accurately. The tax administration should be prepared to issue clarifications and public rulings that are binding on the tax administration. The use of a variety of methods to increase the awareness of tax officials on the way business models are evolving and the speed of change are also required. This could take the form of regular meetings between business and tax officials, and briefings by business senior executives in the tax administration. The elimination of discretionary tax incentives and domiciling the process and decision making in the Treasury or MOF will make for leadership and accountability. Clarity in fiscal policy and tax legislation, as well as effective judicial review are critical elements for creating certainty in the tax system. Consistency in understanding by the taxpayer and the tax authority and the consistent application of rules will reinforce belief in the system. Also, the fight against corruption must be an integral part of the process and financial autonomy for FIRS, with competitive pay structure of tax officials required, as too often bribes can be a way to “buy” certainty.

The Law is as stated as at 31st December 2023.

**CHAPTER 2**

**NIGERIA**’**S TAX SYSTEM**

**SUMMARY**

This chapter on Nigeria’s tax system is in five (5) sections. Section 2.0 is a brief introduction to the Nigerian tax system, whilst section 2.1 briefly traces the history and evolution of the Nigerian tax system, from its pre-colonial era to the present day. Section 2.2 examines the constitutional framework of the Nigerian tax system, with particular focus on the allocation of fiscal powers, and section 2.3 discusses the structure of the Nigerian tax system and highlights the principal income tax legislation and the adjudication process. The challenge of tax policy and tax law reform is examined in section 2.4.

**2.0 INTRODUCTION**

A tax system may be defined as a legal system for assessing and collecting taxes or a legal system for interpreting and enforcing the tax laws.[[81]](#footnote-80) Tax systems express many economic, political and social values. A good tax system should strike a balance between the interests of the taxpayer, tax authorities, and other stakeholders.[[82]](#footnote-81) Several broad tax policy considerations have traditionally guided the development of tax systems and generally, a good tax system should satisfy certain basic conditions, to wit: certainty and simplicity, fairness or equity, transparency and neutrality, adequacy and flexibility and administrative ease.[[83]](#footnote-82)

A tax is ‘a monetary charge imposed by the government on persons, entities, transactions and properties to yield revenue’.[[84]](#footnote-83) All existing and future taxes are expected to align with certain fundamental features.

“First, taxes must demonstrate equity and fairness - in other words; the first is that similarly situated taxpayers should be taxed similarly. Secondly, there must be a certainty; (the subject matter of our study). This implies that a good tax law should specify how the amount of payment is determined and when payment of thetax should occur, and how payment is administered***.***  The third requirement is neutrality, which is that every tax law should have a minimal effect on a taxpayer's decision as to how to carry out a transaction or whether to engage in a transaction. Fourth, there should be the convenience of payment. This entails facilitating a required tax payment at a time or in a manner that is most convenient for the taxpayer. Fifth, there should be simplicity in taxation. Simple tax laws are necessary so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner”.[[85]](#footnote-84)

Certainty of tax is clearly facilitated by the simplicity and neutrality of tax laws for ease of administration and compliance. In the following section, we examine the historical evolution and constitutional antecedents of the tax system in Nigeria.

**2.1. HISTORY AND EVOLUTION OF THE NIGERIAN TAX SYSTEM**

The primary objective and purpose of taxation is to generate revenue for government expenditure for development and social welfare.[[86]](#footnote-85) Taxation may however be used to encourage certain activities (e.g. life insurance or mortgages to finance home development, etc.), as well as an instrument of economic regulation or control to discourage certain forms of anti-social behaviour. Nigeria operates a progressive tax system, and it has evolved with these broad objectives in mind. The Nigerian tax system has evolved over the years, from its pre-colonial period, through the colonial and post-colonial eras, to its present form.[[87]](#footnote-86) As would be expected, it has been shaped by the country’s history, political system and inclination or aspirations.[[88]](#footnote-87) It is also a product of the various constitutional reforms, resulting in the present federal constitution.[[89]](#footnote-88)

Before present-day Nigeria became a British Protectorate in 1901, the different groups who inhabited the geographical jurisdiction had systems of taxation in the form of compulsory services, the contribution of goods, money, labour and levies in the various kingdoms.[[90]](#footnote-89) The pre-colonial societies, comprised of ethnic groups and nationalities, were governed by traditional rulers.[[91]](#footnote-90) Taxation was thus imposed in one form or another to sustain the traditional monarchs and chiefs.[[92]](#footnote-91) In the non-chieftaincies, such as in Igboland, Tiv, Bura, Ebira and Bachama areas of Nigeria, there existed little or no organized system of taxation and in many of these jurisdictions, taxes were not necessarily paid in money, but in kind.

These taxes took the form of Zakkat, levied on Muslims for educational, charitable, and religious purposes; Kudin-kasa, a form of agricultural tax on the utilization of land, and Shuka-shuka levied on the ownership of cattle.[[93]](#footnote-92) Other forms included Ishakole, a contribution of farm products, as a form of land tax, in exchange for the use of land for agricultural purposes. This was payable to traditional rulers or chiefs, family, or community heads. Owo-ori, were individual taxes payable in cash or kind in return for services.[[94]](#footnote-93) War tax was payable by conquered communities and Osusu Imachi Nkwu, being levies for palm fruits, was another form of taxes payable by those who harvested palm fruits, who were expected to contribute a proportion of the palm fruits and the palm kernel oil.[[95]](#footnote-94)

In the riverine areas of present-day Niger Delta region, block hunting and fishing were also forms of taxation. Male adults were expected to offer assets in the form of canoes, boats, nets, and other fishing equipment to fish jointly, while the females sold the harvested fish, and the sales proceeds were used in financing community projects.

With the creation of the Colony of Lagos in 1862, one of the first actions of the then British authorities was to introduce into the territory the main body of English Law.[[96]](#footnote-95) The Land Revenue Proclamation Law was the first income tax statute enacted as early as 1904[[97]](#footnote-96) by Lord Lugard.[[98]](#footnote-97) This was followed by the Native Revenue Ordinance of 1917, which was then extended to Southern Nigeria by the Native Revenue Ordinance of 1918. The Native Revenue Ordinances of 1917, 1918 and 1928, were later incorporated in Direct Taxation Ordinances No. 4 of 1940, Cap 54, which repealed the Native Revenue Ordinance, Cap 74, in the 1923 edition and the Native Direct Taxation (Colony) Ordinance No 41 of 1937. The first ordinance imposing and regulating tax on companies was enacted in 1939.[[99]](#footnote-98) The Ordinance imposed income tax on “any company incorporated or registered under any law in force in Nigeria, and any company which, though incorporated or registered outside Nigeria, carries on business or has an office or place of business in Nigeria”.[[100]](#footnote-99)

The 1940 Direct Taxation Ordinance[[101]](#footnote-100) was essentially the forerunner of Nigerian tax legislation. Under this Ordinance, administrative officers administered direct taxes without any form of uniformity by levying tax on the incomes of Africans in the former regions of Nigeria,[[102]](#footnote-101) while they taxed the incomes of both Africans and Europeans in the federal territory of Lagos on a different basis. Following a review, the Raisman Fiscal Commission of 1958 recommended, amongst other things, the introduction throughout Nigeria of basic principles for taxing incomes. The recommendations were accepted, and these were embodied in the Nigeria (Constitution) Order in Council of 1960. At independence in 1960, Nigeria was a [Federal State](https://en.wikipedia.org/wiki/Federal_state) of three Regions: [Northern](https://en.wikipedia.org/wiki/Northern_Region,_Nigeria), [Western](https://en.wikipedia.org/wiki/Western_Region,_Nigeria), and [Eastern](https://en.wikipedia.org/wiki/Eastern_Region,_Nigeria) in addition to the new mid-western regions that were established in 1963. The Income Tax Management Act (ITMA) of 1961,[[103]](#footnote-102) was enacted and replaced the 1940 Direct Taxation Ordinance. The enactment of the Company Income Tax Act (CITA) in 1961, followed suit. The 1961 ITMA Act has since been amended a couple of times, thus resulting in the Personal Income Tax Act (PITA) 2011, as amended. The CITA has also been amended following a comprehensive review in 1979.

The Petroleum Profits Tax Act (PPTA) 1959[[104]](#footnote-103) was also enacted, to impose a tax upon profits from the winning of petroleum in Nigeria. The PPTA provides for the assessment and collection of taxes on profits derived from petroleum operations.[[105]](#footnote-104) Chargeable persons under the Act are companies engaged in petroleum operations[[106]](#footnote-105) as opposed to individuals who are not permitted to go into petroleum operations.[[107]](#footnote-106) Petroleum, for the purpose of tax under the PPTA, as discussed in detail in chapter 4 of this thesis, is defined as:

“Mineral oil (or related hydrocarbon) and natural gas as it exists in its natural state and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destruction distillation”[[108]](#footnote-107).

The PPTA has been amended several times,[[109]](#footnote-108)including a major amendment by the PSC Act to accommodate the taxation of petroleum operations carried out under the production sharing contract regime. The PPTA as amended by the Finance Act, 2020, and subsequent amendments, as well as the enactment of the Petroleum Industry Act (PIA) in 2021 all seek to achieve certainty in the petroleum taxing regime. These amendments and enactments are examined in detail in subsequent chapters 3, 4 & 9 of the thesis.

The Nigerian tax system in general and the petroleum profits tax system in particular have thus continued to evolve, with the carrying of several studies and the reviews, and the implementation of reports and the several constitutional reviews and reforms. The period of military rule from 1966-1979, and from 1983 to 1999 saw the suspension of the Nigerian Constitution, and the enactment of the current 1999 Federal Constitution. The impact of the current Constitution on the legal, fiscal and tax regime is discussed in the following section of this chapter. The Constitutional effects on petroleum operations is further examined in detail in chapter 3 of the thesis.

**2.2 THE CONSTITUTIONAL FRAMEWORK OF NIGERIA’S TAX SYSTEM**

The Nigerian tax system encompasses the body of laws that provides the legal basis for imposing taxes, the tax compliance pathway for taxpayers, the governmental framework for administering the taxes and the legal system for resolving tax disputes and judicial interpretation of contentious tax law issues. The tax laws as enacted by the National Assembly (NA), derive their legitimacy from the Constitution of 1999 of the Federal Republic of Nigeria, (the Constitution).

The Lyttleton Constitution of 1954[[110]](#footnote-109) first introduced federalism as a form of government in Nigeria. However, as a form of governance structure, federalism or the practice of it has remained a contested phenomenon despite its recognition in the earlier and in the present 1999 Nigerian Constitution.[[111]](#footnote-110) The Constitution of the Federal Republic of Nigeria, 1999, is the fundamental law in Nigeria, from which all other laws flow and derive their validity.[[112]](#footnote-111) Section 1(1) of the Constitution provides for the supremacy of the Constitution as follows:

“This Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.”

The Constitution further provides that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of its inconsistency, be void.[[113]](#footnote-112) The Constitution vests ownership of mineral resources in the Federal Government of Nigeria (FGN).[[114]](#footnote-113) Section 44 (3) of the Nigerian Constitution, which vests the ownership and control of mineral oil and natural gas in the FGN Nigeria, states as follows:

“Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria, or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the federation and shall be managed in such manner as may be prescribed by the National Assembly”.

The Constitution confers on the Federal Government (FG), the exclusive right to legislate on income, profits, and capital gains taxes except as otherwise prescribed by the Constitution. Part 1 of the Second Schedule to the 1999 Constitution has two fiscal legislative lists: the exclusive and the concurrent list. The exclusive list itemizes matters on which the NA, has exclusive powers to enact legislation.[[115]](#footnote-114) The NA is empowered to legislate on customs and excise duties,[[116]](#footnote-115)export duties,[[117]](#footnote-116)stamp duties[[118]](#footnote-117) and taxation of income, profits and capital gains of companies.[[119]](#footnote-118) In addition to the powers conferred on the NA in the exclusive lists, the NA is empowered to enact legislation on capital gains, incomes or profits of persons other than companies, and stamp duties, for collection and administration by the government of the States.[[120]](#footnote-119) Accordingly, the NA has enacted the Personal Income Tax Act (PITA),[[121]](#footnote-120) Stamp Duties Act (SDA)[[122]](#footnote-121) and Capital Gains Tax Act (CGTA),[[123]](#footnote-122) for collection and administration by State governments in respect of taxation of individuals.

The FG has jurisdiction and has enacted several principal income and profit taxes in the country. These include the Petroleum Profits Tax (PPT), Companies Income Tax (CIT), Tertiary Education Tax (TET), Personal Income Tax (PIT),[[124]](#footnote-123)Capital Gains Tax (CGT) (on gains made by companies). The taxation of profits from upstream petroleum operations is under the Petroleum Profits Tax Act (PPTA) as amended by the PSC Act,[[125]](#footnote-124) whilst the midstream and downstream petroleum operations are taxed under the CITA.

Under sections 4(3) & (7) of the Constitution, the NA and the State Houses of Assembly are empowered to legislate on matters itemized in the concurrent list under Part II of the Second Schedule to the Constitution. Section 4(5) of the Constitution, however, states that where there is any inconsistency between the law enacted by the NA and the State House of Assembly on the same subject matter, the law enacted by the NA shall prevail over the State enacted law, to the extent of the inconsistency.[[126]](#footnote-125) Under section 163 of the Constitution, where the NA imposes a tax on matters specified in items of Part II of the Second Schedule to the Constitution,[[127]](#footnote-126) the tax revenues derived from such collection are distributed among the States where the tax proceeds were derived.[[128]](#footnote-127)

Matters not provided for by the Constitution either under the exclusive or the concurrent legislative lists become residual matters for either the State or the local governments to legislate on.[[129]](#footnote-128) In particular, section 4(7)(a) of the Constitution states that the State House of Assembly can legislate on matters that are not explicitly stated in the exclusive legislative list or the concurrent list. Based on this provision, the States have the responsibility to assess and collect personal income tax from individuals that are resident within their jurisdiction.[[130]](#footnote-129) They also collect capital gains tax on capital gains derived by individuals from the disposal of assets located in their jurisdiction, and stamp duties on instruments executed by individuals.

The local governments are responsible for miscellaneous taxes, levies and rates, and Schedule IV to the Constitution defines the functions of the local government to include[[131]](#footnote-130):

(i). collection of rates, radio and television licenses;

(ii). licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheelbarrows and carts;

(iii). assessment of privately-owned houses or tenements to levy such rates as may be prescribed by the House of Assembly of a State.[[132]](#footnote-131)

In summary, the current allocation of fiscal powers under the Constitution creates a vertical imbalance in favor of the FG, and the opportunity for overlaps and the incidence of double or multiple taxation. This is notwithstanding the fact that the Taxes and Levies (Collection List) Act[[133]](#footnote-132)specifies the taxes and levies collectable by each tier of government. The constitutionality or otherwise of the exercise of the taxing powers of the federating units, vis-à-vis the powers of the FG have not, yet, been fully tested in the courts. Specific instances of the exercise of the overlapping taxing powers by the federating units and the incidents of multiple taxes and levies will be examined in the relevant chapters[[134]](#footnote-133) of this thesis to determine the extent this impacts on certainty or lack of certainty in the upstream petroleum tax system.

# **2.3** **The Structure of the Nigerian Tax System**

Nigeria is a federation of 36 states, and operates a federal constitution, with three tiers of government: federal, state, and local governments. Nigeria has a progressive tax system, characterized largely by direct taxation, which focuses more on the formal sector, to the neglect of indirect taxation and the informal sector. Companies engaged in petroleum operations are taxed either under the PPTA if engaged in exploration and production, or taxed under CITA if engaged in downstream refining, manufacturing etc. Indirect taxes and consumption tax remain largely undeveloped and there is a very low Value Added Tax rate[[135]](#footnote-134). Whilst considerable progress has been made with taxing those in formal employment, self-employed persons, professionals, and some companies are yet to be captured in the tax net. According to the Joint Tax Board (JTB), as at May 2017, the total number of taxpayers in Nigeria amounted to just 14 million out of an estimated 69.9 million who are economically active.[[136]](#footnote-135)

As stated earlier, the FG has the exclusive right under the Constitution to legislate matters in the exclusive legislative list. The FG also has powers to legislate along with the State governments on matters on the concurrent legislative list. In the event of conflict between a Federal and State legislation, the Federal legislation takes priority over the State legislation, to the extent of the conflict or inconsistency.[[137]](#footnote-136) By virtue of the Taxes and Levies (Approved list for Collection) Act, the three tiers of government have listed items on which they may collect taxes and levies.[[138]](#footnote-137) It is an essential requirement in a federal system of government that the tiers of government should not be subordinate to the other. The Nigerian Constitution fails this very important test. The allocation of fiscal powers between the Federal and State governments[[139]](#footnote-138) is skewed heavily in favor of the Federal government, and by implication, the States as federating units are deprived of the power to tax or raise funds to finance services as well as harness resources for development at their own pace.[[140]](#footnote-139) This has led to the incidence of multiple taxes and levies by States scrambling to enact laws and the levy all kinds and manners of taxes and levies. To this extent the Constitution and the allocation of fiscal powers under the Constitution contribute to the uncertainty and lack of clarity of taxing boundaries and the increased cost of operations in the petroleum sector generally.

# **Principal Legislation and taxes**

There are over twelve (12) principal and subsidiary income, profit and transaction taxing statutes potentially affecting petroleum operations in Nigeria. For this study, our focus will be on the Petroleum Profits Tax Act, as amended by the Deep Offshore and Inland Basin Production Sharing Contract Act, and the Companies Income Tax Act. The Acts are namely the:

1. Petroleum Profit Tax Act (PPTA);[[141]](#footnote-140)
2. Deep Offshore and Inland Basin Production Sharing Act (DOIBPSCA);
3. Companies Income Tax Act (CITA);
4. Tertiary Education Trust Fund (Establishment, etc.) (TETF) Act;[[142]](#footnote-141)
5. Capital Gains Tax Act (CGTA);[[143]](#footnote-142)
6. Value Added Tax Act (VATA);[[144]](#footnote-143)
7. Personal Income Tax Act (PITA);[[145]](#footnote-144)
8. National Information Technology Development Act;[[146]](#footnote-145)
9. Niger Delta Development Commission (Establishment ) Act,
10. Nigeria Local Content Development Act
11. Stamp Duties Act (SDA);[[147]](#footnote-146) and
12. Custom, Excise Tariff, Etc. (Consolidation) Act.[[148]](#footnote-147)

Petroleum Profit Tax (PPT) derives its legal basis from the Petroleum Profits Tax Act (PPTA). It is a tax imposed on profits of companies carrying on petroleum operations in Nigeria, so long as the profits are derived from winning, obtaining and transportation of petroleum. The top tax rate for the PPT, under the PPTA is 85% of the chargeable profit. However, companies in the first five years of petroleum operations can enjoy a concessionary tax rate of %65.75% if they have not commenced continuous commercial production. Companies engaged in upstream petroleum operation in a production sharing arrangement are liable to PPT at 50%. The DOIBPSA/PSC Act amends the PPTA to accommodate the taxation of petroleum operations carried on in production sharing contract operations. The PSC basis for taxation is the income from Contract Areas, as opposed to the global income of the entity prescribed under the PPTA.

Companies engaged in upstream petroleum operations in PSC’s with NNPC, in the deep offshore and inland basis contract area, have been granted certain fiscal incentives and concessions, including enhanced capital allowance and capital investment allowance as well as reduced royalty rates, determined by the terrain of the petroleum finds. The application of the incentives and the interpretation of certain provisions of DOIBPSA, vis-a-vis the PPTA, have resulted in several contentious issues that have gone to arbitration and litigation. To stem this spate of litigation and perhaps to claw back some of the concessions granted to such PSC petroleum operations, the DOIBPSA PSC/Act was amended in 2019.[[149]](#footnote-148) We shall examine these contentious issues, since the interpretation and administration of PSC Act, vis-à-vis the PPTA, has resulted in incidents of taxing uncertainties which are addressed in chapters 4 of the thesis.

The Company Income Tax Act (CITA) on the other hand is the primary company income tax (CIT) imposed on profits of incorporated companies carrying on business in Nigeria, other than the tax imposed on the profits derived from upstream petroleum operations.[[150]](#footnote-149) CIT applies to the worldwide income of a Nigerian incorporated company, while non-Nigerian companies are assessed on the income attributable to their operations in Nigeria. The incomes liable to the CIT include business or trade income, rent or premium from property lease or occupation, fees and allowances due from rental income, profits or gains from acquisition and disposal of short-term monetary instruments, and any other annual profits or gains. The intersection and the interaction of the PPTA and CITA has been a source of uncertainty and interpretational challenges with regards to the treatment of associated gas[[151]](#footnote-150) expenditure and income.

The Tertiary Education Tax (TET), (formerly referred to as Education Tax) is acontribution to the Education Tax Fund.It is imposed at 2% on the assessable profit of companies incorporated in Nigeria. The TET levy derives its legal basis from the Tertiary Education Trust Fund (Establishment) Act 2011. There is also the 3% NDDC levy[[152]](#footnote-151) imposed on the annual budget of oil producing companies operating in the Niger Delta region of Nigeria. The incidence of these taxes and levies on companies engaged in petroleum operations is aimed at increasing government take from the sector and creates opportunity for conflicts and distortions in the system.

There are also transaction taxes, and these include the Value Added Tax (VAT), which derives its basis from the Value Added Tax Act (VATA). The VAT is chargeable on the supply of taxable goods and services except items specifically stated to be exempt, which includes all exports, and all exported services. Zero-rated goods and services include non-oil exports.[[153]](#footnote-152) The capital gains tax (CGT) derives its legal basis from the Capital Gains Tax Act (CGTA) and applies to capital gains on disposal of assets by companies and individuals in Nigeria. The CGTA defines the ‘disposal of assets’ as the capital sum obtained from the sale, lease, transfer, assignment and any other disposal of assets. The tax rate for the CGT is 10% of chargeable gains. This impacts disposals in upstream petroleum operations in several ways and has been the subject matter for administrative and judicial interpretation, especially with respect to capital allowances. These are discussed in chapter 4 of the thesis.

# **Tax Administration**

The administration of tax in Nigeria is vested in the tax authorities at the Federal and State government levels and the revenue committees at the Local government levels.[[154]](#footnote-153) The Federal Inland Revenue Service (FIRS) administers the Federal taxes, while the States taxes are administered by the Internal Revenue Board of the respective States.[[155]](#footnote-154) The local councils administer local government levies. The enabling law in respect of each type of tax will normally contain a provision as to the body charged with the administration of the tax. The taxes can be categorized into 3 types, i.e. taxes imposed on individuals, taxes imposed on corporate entities and taxes imposed on transactions and assets.

The functions of the FIRS include assessing persons, companies, and enterprises chargeable to tax, as well as collecting, accounting, and the enforcement of payment of taxes as may be due to the Government or any of its agencies. The FIRS is empowered to make rules from time to time for the administration of the taxes under the relevant enactments.[[156]](#footnote-155) The FIRS is responsible for the assessment and collection of the PPT and CIT[[157]](#footnote-156) as well as the power to administer all the enactments listed in the First Schedule to the FIRS Act[[158]](#footnote-157) and any other enactment or law on taxation in respect of which the NA may confer power on the FIRS.

The State Inland Revenue Services perform functions similar to the FIRS, concerning management, assessment and collection of taxes, at the States level, whilst the revenue committees play similar roles at the local government levels. The taxing authorities rely in practice on the annual Finance Appropriation Acts and circulars,[[159]](#footnote-158)as well as Practice Notices and Guidelines to effect changes in the taxing regime.[[160]](#footnote-159) Where appropriate, there is also reliance on English and common law principles,[[161]](#footnote-160) customary laws and tradition[[162]](#footnote-161) and judicial precedent to assist and provide direction to the tax authorities and taxpayers.[[163]](#footnote-162)

The coordination of the tax administrative and regulatory authorities of the country is done by the Joint Tax Board (JTB). The functions of the JTB include the exercise of the powers and duties conferred on it by the Personal Income Tax Act (PITA) and other Acts. The JTB also advises the FG in respect of double taxation arrangements with other countries and other taxation matters, having effect throughout Nigeria in respect of any proposed amendment to PITA. The JTB has responsibility to promote uniformity, both in the application of PITA and in the incidence of tax on individuals throughout Nigeria. The JTB is required to impose its decisions on matters of procedure and interpretation of PITA, for purposes of conforming with agreed procedures or interpretation. By the law establishing the JTB, it would appear the focus of the JTB should be limited to the proper functioning of PITA, although in practice it seems it may have extended its reach. Consequently, there is a recommendation in the Revised National Tax Policy (RNTP) approved in 2017[[164]](#footnote-163), to review the law establishing the JTB, which has not been acted on.

**2.3.3 TAX ADJUDICATION AND APPEAL PROCESS**

The Nigerian judicial system has procedures for tax adjudication, and the common law principle of precedent applies to decisions. Tax statutes confer on individuals or companies disputing an assessment raised on it by the tax authority the right to give notice of objection to the FIRS or the relevant State IRS, seeking a review or revision of the assessment. Where the taxpayer fails to agree with the tax authority on the amount of tax payable, and the relevant tax authority does not revise or waive the assessment, then a notice of refusal to amend (NORA) the assessment will be issued. A taxpayer who has failed to agree with the tax authority as to the amount of tax due and liable to be paid and on whom a NORA has been served may appeal to the Tax Appeal Tribunal (TAT). Such an appeal must be filed by a notice in writing and within 30 days.[[165]](#footnote-164) The Tribunal shall have the power to settle disputes arising from the operation of the FIRS Establishment Act 2007 (FIRSEA), and under the Fifth Schedule to the FIRSEA. The TAT was established by section 59 (1) of the FIRSEA. It is empowered to settle all tax disputes arising from all principal federal tax Acts enumerated in the Fifth Schedule of the FIRSEA. Section 59(1) states:

“(1) A Tax Appeal Tribunal is established as provided for in the Fifth Schedule to this Act.

(2) The Tribunal shall have the power to settle disputes arising from the operations of this Act and under the First Schedule.”

In addition to this function of the Tax Appeal Tribunal (TAT),[[166]](#footnote-165) disputes from the defunct Body of Appeal Commissioners and the now defunct VAT Tribunal are referred to the TAT.[[167]](#footnote-166) Appeals from the TAT may lie to the Federal High Court (FHC). A further appeal against the decision of the FHC shall lie with the Court of Appeal (CA) and from there to the Supreme Court (SC).

The jurisdiction of the TAT came under challenge as unconstitutional when the FHC gave two conflicting decisions on the proper standing of the TAT in the tax dispute resolution process. This jurisdictional challenge of the TAT related to the interpretation of section 251 (1) (b) of the 1999 Constitution of Nigeria (as amended), which reads:

“(1) Notwithstanding anything to the contrary contained in this Constitution, and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters, (b) connected with or about the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation.”

In the case of *TSKJ II Construces v Federal Inland Revenue Service*,[[168]](#footnote-167) it was argued that section 251 confers exclusive jurisdiction on the FHC to the exclusion of any other court in civil cases and matters on taxation of companies and other bodies carrying on businesses in Nigeria e.g. unregistered companies, non-resident companies etc. The FHC struck down the composition of the TAT on the ground that the FIRS Establishment Act and the Tax Appeal Tribunals (Establishment) Order of November 25th, 2009, under which the TAT was established, conflicted with the exclusive jurisdiction of the FHC conferred by section 251 of the Constitution.

However, in the second case of *Nigeria National Petroleum Corporation v Tax Appeal Tribunal & 3 Ors*,[[169]](#footnote-168) the FHC held that:

“The Tax Appeal Tribunal is not a court; it is subject to appeal to the FHC and is indeed supervised by the Federal High Court through judicial review….”

It held further that the TAT is not a court within the meaning contemplated by the Constitution. It is a part of the executive arm of government, as it is established by the Minister of Finance.

Fortunately, the two conflicting FHC decisions have been clarified by the Court of Appeal, in *Nigerian National Petroleum Corporation v CNOOC Exploration & Production Nigeria Limited & 2 ORS.*[[170]](#footnote-169) The court upheld the jurisdiction of the Tax Appeal Tribunal (TAT) to determine tax disputes. The appeal arose from disputes over petroleum profits tax and tertiary education tax assessments issued on the Appellants by FIRS. The Court in its judgement referred to its earlier decision in the unreported judgement in *Shell Nigeria Exploration and Production & Ors v FIRS & Anor* where it recognized the TAT as a vital step towards resolution of tax disputes. Furthermore, it stated:

‘When an assessment is made and a party is not satisfied, it can serve a Notice of Objection to FIRS to amend the assessment. The party may also then appeal against the assessment to the TAT. If the party is still dissatisfied, it can approach the FHC, the Court of Appeal, and then the Supreme Court.’

Accordingly, the court held that the TAT’s jurisdiction to determine tax disputes did not encroach upon the exclusive jurisdiction of the Federal High Court as conferred on it by section 251(1)(a) and (b) of the 1999 Constitution (as amended). The Appellants explained that the institution of tax appeals at the TAT before approaching the Federal High Court was merely a condition precedent to approaching the Federal High Court and that in any event; the decisions of the TAT could be reviewed and quashed by the Federal High Court upon an application for judicial review or appeal.

This clearly brings to the fore the matter of the interpretation of taxing statutes, which it may be said to embody authoritative formulae, or put differently; the very words which are used constitute part of the law. The interpretation of words or terms used in statute should be such that they present a consistent and understandable meaning to avoid uncertainty and a variable tax jurisprudence. This is at the core of the matter, especially if judicial intervention results in confusion, rather than clarity. It is therefore part of the proposition of this study that a principle-guided tax policy formulation, which is properly translated into tax law, and interpreted and applied correctly by a judicial tribunal or court, will enhance clarity and certainty in the tax system. This also further emphasizes the importance of competent legislative drafting, if we are to achieve the precise and accurate interpretation of statutes, especially by the tax authority and the courts. The courts and tribunals seek to ascertain the intent of the Legislature through the medium of the authoritative form in which it is expressed, i.e. tax statute. The law is therefore deemed to be what the court interprets it to be. However, the very concept of ‘interpretation’ connotes the introduction of elements which are extrinsic to the words of the statute. Lord Justice Denning in *Seaford Court Estates v Asher*[[171]](#footnote-170) stated:

“A Judge must not alter the material of which the Act is woven but he can and should iron out the creases. When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament and then he must supplement the written words to give force and life to the intention of the legislature”.

It is generally accepted that tax statutes must be interpreted strictly, by applying the literal rule of interpretation. In the case of *Cape Brandy Syndicate v IRC*,[[172]](#footnote-171) and followed in *CIT v Ajax Products Ltd*,[[173]](#footnote-172) Rowlatt J, stated:

“In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing to be implied. One can only look at the language used”. (p,747). Thus, when the language of a taxing statute is clear if an assessee falls within the four corners of the statute, he is to be taxed; if not, no tax is to be levied”.

Tax jurisprudence has shown that this depends on the courts or judge’s ability to read what is stated in plain language, read between the lines, read through the provision, and the examination of the intent of the Legislature, whilst calling upon case law and other aids of interpretation. This is further explored in chapter 4 of the thesis, where we examine the administrative and judicial intervention required to achieve clarity and certainty in taxation and the system.

**2.4. TAX POLICY AND TAX LAW REFORM**

The fundamental objective of the Nigerian FG is to raise money from taxes to fund development. It would therefore be expected that the fiscal policy objective of the government is to use government spending and taxation to influence the economy. Tax Policy is therefore relevant to the formulation of a tax strategy which is supportive to investment and sustainable development.

A poorly designed tax system, where the rules and their application are non-transparent, overly complex, or unpredictable may discourage investment, adding to project costs and uncertainty. Also, tax systems that leave excessive administrative discretion in the hands of tax officials tend to invite corruption and undermine good governance objectives fundamental to securing an attractive investment environment. There is therefore the need to have in place a robust policy making, design and evaluation process and a legal framework that foster systematic policy evaluation across board. It is necessary to have the necessary mechanisms in place to ensure ex-post evaluations of regulations and the quality engagement with stakeholders during the policy making process. The government needs to provide a degree of transparency during the policy evaluation process and promote the use of the findings of policy evaluations and results for budgetary discussions. Ultimately, for good governance, policy makers as OECD studies have demonstrated, are encouraged to ensure that robust policy feeds into the tax system, and imposes an acceptable tax burden that can be accurately determined, and which keeps tax compliance and tax administration costs in check[[174]](#footnote-173).

The reform of the tax system would therefore entail an effective tax policy and strategy, tax law, and a robust administrative and judicial system and procedures. The tax policy of the country, the petroleum fiscal policy and tax law, must aspire to achieve clarity, improved fairness, transparency, efficiency, and effectiveness of the tax system in the petroleum industry. It should align with sustaining development of the industry and the country.

Following the report of study groups, Nigeria took a bold step in 2012 to engage widely on articulating a national tax policy, which is examined in detail in chapter 5 of the thesis, alongside the drafting of the Nigeria Oil and Gas Policy document of 2016/17, as well as the National Petroleum Fiscal Policy documents. Further to the design and engagement of stakeholders, a set of guiding principles and strategies for the Nigerian tax system was approved as the National Tax Policy (NTP) document, 2012. The NTP specifically states that the overall focus and primary objective of the Nigerian tax system is to provide and contribute to the social and economic wellbeing of Nigerians. The policy aims to improve the effectiveness of existing tax policies and the utilization of tax revenues for the benefit and development of the citizens.[[175]](#footnote-174)

The 2012 National Tax Policy was revised in 2016, and the Revised National Tax Policy (RNTP), document was approved in January 2017, by the Federal Executive Council (FEC). RNTP did not specifically address the oil and gas industry. However, the Ministry of Petroleum Resources (MPR) has articulated the National Petroleum Fiscal Policy Document[[176]](#footnote-175), which was also approved by FEC in 2017. The RNTP establishes fundamental principles to guide an orderly development of the Nigerian tax system and reinforces the need for tax laws and administrative practices to promote economic development. It also seeks to address key challenges confronting the Nigeria tax system[[177]](#footnote-176), including:

1. Low tax to GDP ratio;
2. Fragmented database of taxpayers and weak structure for the exchange of information;
3. The multiplicity of taxes and revenue agencies;
4. Poor accountability for tax revenue;
5. Use of aggressive and unorthodox methods for tax collection;
6. Failure by tax authorities to honour refund obligations to taxpayers;
7. The non-regular review of tax legislation, which has led to obsolete laws, that do not reflect current economic realities.

Some of the key objectives[[178]](#footnote-177) policy guidelines, responsibilities, and recommendations, for the tax system[[179]](#footnote-178) of the NTP/ RNTP include:

1. Ensuring that there is only one revenue agency per level of government;
2. Establishment of a tax court as an independent body to adjudicate in tax matters,
3. Lower tax rate and VAT compliance threshold for SME’s;
4. Establishment of an Office of Tax Simplification for continuous improvement to tax legislation and administration;
5. Developing Key Performance Indices (KPI’s) for Nigeria to attain a top 50 position on the global index of ease of paying taxes by 2020 and consistently improve on the ranking;
6. Administrative framework for amnesty and whistleblowing as part of the strategies for curbing evasion and widening the tax net, and
7. Independent National Electoral Commission (INEC) mandate political parties to articulate, prepare, provide and make public their tax agenda before and during election campaigns.

The assumption is that the general principles enunciated in the RNTP apply to the oil and gas industry and should complement the specific fiscal policy document articulated by MPR for the petroleum industry. The 2016/2017, National Petroleum Industry Fiscal Policy document seeks to create a fiscally neutral regime with respect to the types of hydrocarbons to be exploited. The fiscal policy document generated by MPR articulates six (6) key principles to guide the development of taxation of petroleum operations, as follows:

* Right pricing.
* Sustainability.
* Separate fiscal treatment for oil and gas.
* Non-consolidation or non-recovery of gas costs from oil income.
* Upstream Incentives for Gas development; and,
* Midstream Incentives.

The above recommendations and principles will be further examined in chapter 5 of this thesis. It remains to be seen how these broad fiscal policy guidelines will get translated into clear and understandable legislation. There are several other ongoing reforms geared at enhancing tax collection and administration with minimal enforcement cost. These include the introduction of a unique Tax payer Identification Number (TIN), an automated tax system that facilitates tracking of tax positions and issues by individual taxpayers, an e-payment system, which enhances smooth payment procedure and reduces the incidence of tax touts. It is hoped that the over-reliance on the formal sector and the ineffective taxation of the informal sector, and the absence of reform in the oil and gas sector will end soon, and that the Nigeria’s Tax to GDP ratio, which presently stands at just 6%[[180]](#footnote-179) will improve.

## 

## CONCLUSION

The historical antecedents and the age of the legislation as well as the constitutional framework of the country, and the absence of a comprehensive, sustained and structured process for articulating principle-guided appropriate fiscal, tax policy and tax law reform for petroleum operations and taxation, may have all contributed to creating uncertainty in the tax system, and the lack of transparency in tax administration. Ineffective or lack of sustained tax law review and reform, particularly as it affects the petroleum industry in Nigeria have therefore contributed to the failure to keep pace with developments in the complex petroleum industry, or develop a competitive, clear, neutral, and predictable petroleum tax system. The ongoing program of articulating a tax policy for the country, and the fiscal policy priorities for the petroleum industry, should act as the impetus needed for comprehensive tax law review in the country, and for the petroleum industry. The tax system must therefore be designed to address economic, political, and social values, as well as strike a balance between the interests of the taxpayers and the tax authorities. Taxes in the tax system must demonstrate equity and fairness, certainty, neutrality, the convenience of payment, as well as evince simplicity where possible, as simple tax laws and predictable tax systems are necessary so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner.

**CHAPTER 3**

**TAXATION OF PETROLEUM OPERATIONS IN NIGERIA**

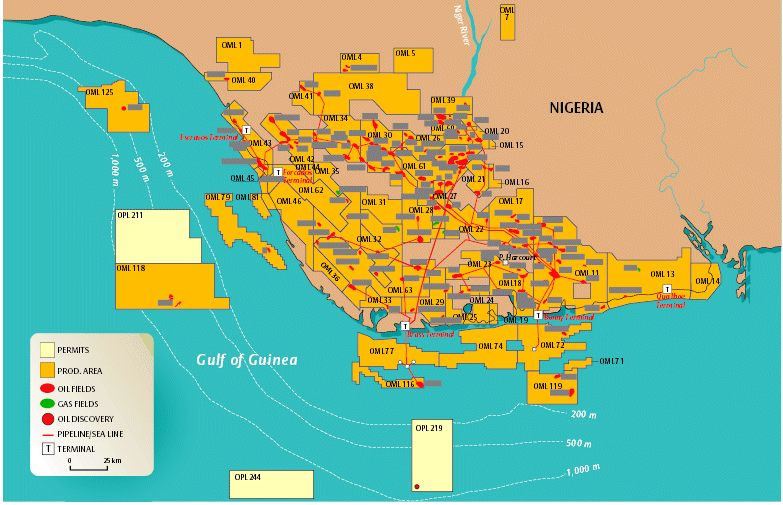
**3.0 INTRODUCTION**

This chapter provides the background to petroleum operations in Nigeria. It also examines the Constitutional, legislative, and regulatory framework for the taxation of petroleum operations in Nigeria. The impact of the 1999 Nigerian Federal Constitution on the ownership of petroleum resources and the exercise of taxation powers of the federating units in the Nigerian Federation is examined as a potential source of uncertainty in the tax system. The absence of, or the lack of sustained fiscal and tax policy development is also highlighted as impacting tax legislation development and certainty for petroleum operations.

The regulatory and licensing framework for petroleum operations under the Petroleum Act (PA) and the Petroleum Regulations[[181]](#footnote-180) are also discussed in the light of their impact on fiscal policy and tax legislation and administration. This is followed by a brief overview of the tax administration of the Petroleum Profits Tax Act (PPTA) as affected by the other relevant tax statutes.

**3**.**1 BACKGROUND TO PETROLEUM OPERATIONS**

Exploration and production of petroleum in Nigeria dates to the Mineral Oils Act of 1914[[182]](#footnote-181). The Mineral Oils Act was enacted “to regulate the right to search for, win and work mineral oil”[[183]](#footnote-182). Presently, oil and gas exploration and production are ongoing in the onshore Anambra, offshore Benin / Dahomey (deep and ultra-deep waters) and the Niger-Delta (shallow and deep offshore) basins of the country as highlighted in the acreage map below.

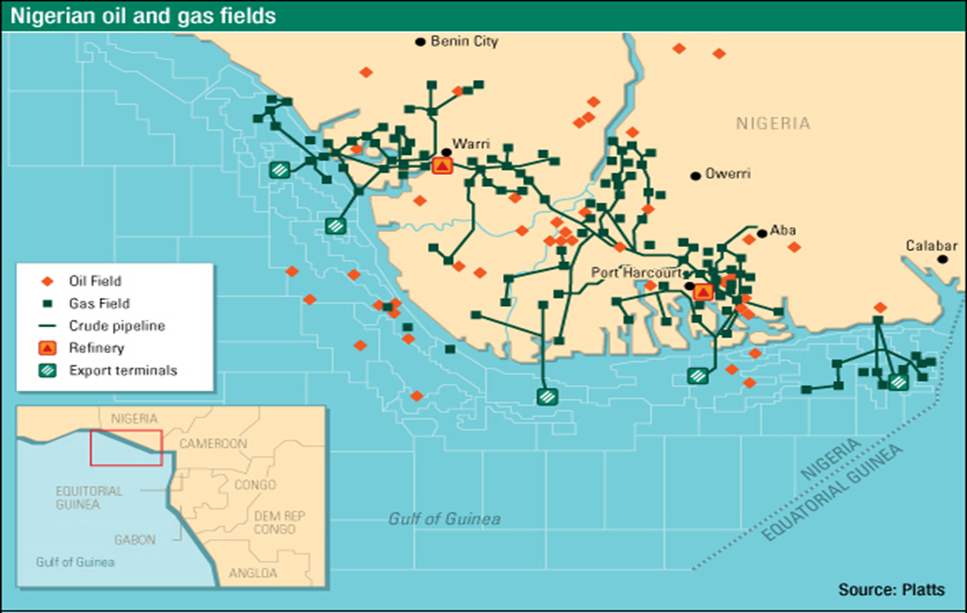


**Source**:http://www.oilandgas360.com/wp-content/uploads/2016/06/ENI-Nigeria-Asset Map.gifx38408

According to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), as of January 2024, Nigeria's crude oil and condensate reserves were 37.50 billion barrels; made up of 31.56 billion barrels crude oil and condensate of 5.94 billion barrels[[184]](#footnote-183). The total gas reserves is 209.26 trillion cubic feet, made up of,102.59 associated and 106.67 trillion non-associated.[[185]](#footnote-184) Ranked as Africa’s largest oil producer and the sixth in the world, Nigeria has a maximum oil production capacity of 2.5 million barrels per day and an average daily production of 1.8 - 2 million barrels.[[186]](#footnote-185) Nigeria has the 12th largest proved oil reserves in the world, and in terms of oil production, Nigeria is the 13th largest oil producer, with about 3% of world production. Oil reserves-to-production ratios over the decades have been within the range of 20 to 50 years and in 2015 was a very reasonable 46 years, in line with average international ratios.[[187]](#footnote-186)

With the technical and financial leadership of International Oil Companies (IOC’s) in the prospecting, exploration and development activities in the Nigeria oil and gas (O&G) sector, Nigeria has become a major global O&G producer and reserve holder.[[188]](#footnote-187) Nigeria thus became an active player in the global O&G market and joined the Oil Producers and Exporting Countries (OPEC) group, as its 11th member in 1971. In the same year, Nigerian National Oil Corporation (NNOC), was established as an instrument for accomplishing the government’s policy objectives with respect to oil. The NNOC operated concurrently with the Ministry of Petroleum Resources (MPR), and was empowered to enter new beneficial oil arrangements with interested companies in Nigeria, on behalf of the FG. However, in 1977, the FG thought that a higher standard of goals and policies set for the oil industry was best achieved by a single entity. The NNOC and the MPR were therefore merged to form what is known today as the Nigeria National Petroleum Corporation (NNPC).

The map below shows the oil and gas fields, the crude oil pipelines, and export terminals, as well as the location of the refineries. Nigeria continues to rely heavily on its crude oil export earnings, and to a lesser degree, its gas[[189]](#footnote-188) and LNG exports. Sadly, Nigeria imports the bulk of its refined petroleum product needs, despite holding significant O&G reserves and producing substantial crude oil for export.



Oil & Gas Fields, Pipelines and Export Terminals

The bulk of the Federal revenue is derived from the sale of crude oil, and the taxation of upstream petroleum operations. Given the importance of crude oil to the economy of Nigeria, a special petroleum profits tax regime (the PPT), is in place for upstream petroleum operations. Mid and downstream O&G operations are taxed under the general Companies Income Tax Act (CITA). Gas revenues remain low due to inadequate investment and the failure to develop a clear gas policy and the regulation of market prices.[[190]](#footnote-189) Nigeria LNG taxation is under CITA and NLNG Fiscal Incentives and Guarantees Act[[191]](#footnote-190). The clear motivation for special taxes on petroleum operations is rooted in rent theory and the assumption that O&G resources provide an extraordinary rate of resource rent (economic rent)[[192]](#footnote-191) coupled with the need for increased government take from the sector. ‘Resource rent’[[193]](#footnote-192) essentially refers to the difference between the values of hydrocarbons extracted from a deposit and the total costs of exploring and producing the hydrocarbons, synonymous with excess profit. The rent is shared between the State and the oil companies engaged in extracting hydrocarbons either on a concession oil mining licence (OML), or by contract, in the case of Production Sharing Contracts (PSC).[[194]](#footnote-193) The basic proposition underlying petroleum taxation is to acquire for the State in whose legal territory the resources in question lie, a fair share of the wealth accruing from their extraction, whilst enabling investors to acquire the optimal economic recovery of those hydrocarbon resources.

Questions which arise include what is fair and at what point in the extraction and production process is the State’s take to be levied. In the following section we will examine how the ownership of O&G and the allocation of taxing powers under the Nigerian Constitution have impacted fiscal policy and tax legislation certainty.

**3.2. THE NIGERIAN CONSTITUTION AND PETROLEUM OPERATIONS**

The 1999 Federal Constitution confers ownership of petroleum resources on the Nigerian State.[[195]](#footnote-194) Section 44 of the 1999 Constitution provides that ownership is vested in the State, however the word ‘State’ as used refers to the FG of Nigeria as opposed to component or federating States. In the case of *Attorney General of the Federation v. Attorney General, Abia State & 35 Ors. (No. 2),*[[196]](#footnote-195) the Attorney-General (AG) of the Federal Republic of Nigeria brought an action against the 36 Federating States. The contention of the AG in the case was that natural resources located within the Continental Shelf of Nigeria are not derivable from any State of the Federation. The defendants argued that the territory of each State extended beyond the low water mark on to the Territorial Water. The defendant States also maintained that natural resources derived from both onshore and offshore are from their respective territories. Each State was therefore entitled to an allocation of not less than 13 percent as provided in the proviso to Section 162(2) of the Constitution.

The insistence of the petroleum producing States for greater control of the resources derived from their territories was premised on the derivation principle as recognized under section 162 of the 1999 Constitution. The proviso to section 162(1)[[197]](#footnote-196) of the Constitution[[198]](#footnote-197) states that:

“Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation account directly from any natural resources.”

The FG maintained that the southern boundary of the littoral States is the low-water mark of the shore of each such State. The littoral States on their part asserted that the territory of each littoral State extended offshore, as far as the Continental Shelf and even beyond. Although the case essentially involved the division of revenue between the federating units of Nigeria, it addressed some issues of entitlement to resources and interpretation, such as the ‘connotation of “State” under international law’ and by implication the right to tax the resources in their respective jurisdictions. In this respect, the court held that a “Coastal State” under the 1982 UNCLOS[[199]](#footnote-198) means Nation State and not the internal States of a country such as the littoral States in Nigeria. This is necessarily so because international law applies to countries that are members of the comity of Nations.[[200]](#footnote-199) .

In addition to the issue of the determination of the ownership of the resources, the purpose of the action was to calculate the amount of revenue accrued to the Federation Account. To that end, the plaintiff sought a determination of the seaward boundaries of the Littoral States within the Federal Republic of Nigeria, as a basis for determining the amount of revenue accruing to the Federation Account (FA) directly from any natural resources derived from the defendant States. Aside from the States seeking to generate more tax revenue by exercising some legislative authority in enacting taxation statutes, the States also sought to challenge the exclusive Federal ownership of natural resources and the Constitutionality of levying of certain charges and expenses against the FA[[201]](#footnote-200), as well as the determination of the extent of the rights of coastal States over resources derived from each State's Continental Shelf.

The Supreme Court (SC) in exercising its original jurisdiction as conferred on it by s.232 (1) of the Constitution, made pronouncements on several issues. The SC held that no State government, local government or any group of persons other than the FG can exercise any sovereign right, claim, control or ownership over O&G resources within, upon or underlying all lands, sea bed and sub-sea including lands under the territorial waters of Nigeria, or that form part of the Continental Shelf or Exclusive Economic Zone (EEZ) of Nigeria.[[202]](#footnote-201) The ownership of natural resources and the allocation of fiscal and taxing powers under the 1999 Constitution has, therefore, continued to affect the exercise of the legislative power to tax and generate revenue and has added to the uncertainty in the tax system in general, and to upstream petroleum taxation in particular. The resource ownership structure in Nigeria is clearly different from that operative in the United States, which admits to ownership by individuals, and provincial ownership in Canada.

The Nigerian State awards directly or through the National oil company (NNPC) licences and concessions to Operators and Contractors to explore, develop and produce the natural resources. The Federating States are denied any Constitutional basis for exploiting and generating revenue from the natural and mineral resources in their territory. The Federating States also lack the legal authority to tax the activities carried out in their local jurisdiction, hence the attempts by the States to do this only fuels the uncertainty in the tax system.

The 1999 Constitution has fiscal lists with items on which the different tiers of government may enact laws.[[203]](#footnote-202) The Exclusive Legislative List has most of the items and the FG has exclusive jurisdiction to legislate on these items[[204]](#footnote-203)as discussed in the previous chapter. The centralization of fiscal powers and allocation of taxing powers in the FG under the 1999 Nigerian Constitution has therefore resulted in the inability of the Federating States and Local Governments in Nigeria to legitimately enact clear and certain laws for tax revenues.

On the division of powers between the FG, through the National Assembly (NA) and the State Government Houses of Assembly (HA) in sections 4(2),(3) and 4(6) and (7) (a) of the Constitution, respectively, the Supreme Court (SC) has  held as follows in the case of *Doherty v Balewa[[205]](#footnote-204)*, that “The Federal Parliament, i.e. NA, can legislate for the Federation only on those matters in respect of which it is specifically empowered to legislate under the Constitution”, while in the case of *Togun v Oputa*[[206]](#footnote-205), the Court of Appeal (CA) of Nigeria held as follows: “Nigeria is a Federal Republic with a Constitution in which the legislative powers of the NA and the State HA are clearly defined. We have the Exclusive and the Concurrent Lists in which the NA could legislate. This leaves the State HA to legislate exclusively on Residual matters not included in either the Exclusive or Concurrent Lists”. Furthermore, on the Residual Legislative List, in the case of *A.G. Federation v A.G. Lagos State[[207]](#footnote-206)*, the SC of Nigeria held thus:

‘Section 4 of the Constitution of the Federal Republic of Nigeria, 1999, divides legislative powers between the NA for the FG and the HA for the State in the Exclusive and Concurrent legislative list. The NA has exclusive powerto legislate for the Federal Republic or any part thereof in respect of matters in the Exclusive list. The NA also has power to legislate, though not exclusively, on matters in the Concurrent legislative list set out in the first column of Part II of the Second Schedule to the Constitution and on any other matter with respect to which it is empowered to make laws. The HA of a State has power to make laws for the State or any part thereof on any matter not included in the Exclusive legislative list, and on any matter in the Concurrent legislative list, subject of course to a federal enactment taking precedence over a State’s enactment on the same matter, and on any other matter for which it is empowered to make laws. The HA of a State also has exclusive power to legislate on residual matters; that is, matters that are not in the Exclusive and Concurrent legislative lists’

The above fiscal arrangement points to a clear imbalance in the taxing powers between the FG and the States. To partly address this major taxing imbalance, and delineate the tax boundaries between the Federating units, the Multiple Taxes and Levies Act, which gives the Finance Minister power[[208]](#footnote-207) to prescribe the taxes to be collected by the State and the Local Governments by amending Parts II and III to the Second Schedule to the Constitution, was enacted[[209]](#footnote-208). It has however been suggested that the Multiple Taxes and Levies Act is itself unconstitutional[[210]](#footnote-209). The 1999 Constitutionbeing the grund norm, Section 1(3) states:

‘... that any other law that is inconsistent with the provisions of the Constitution is null and void to the extent of its inconsistency’.

In *Abacha v. Fawehinmi27* it was held by the SC that the Constitution is the supreme law of the land; it is the grund norm, and its supremacy can never be called to question. The SC also stated in the case of *A.G. Abia State v. A.G. Federation*,[[211]](#footnote-210) while commenting on the supremacy of the 1999 Constitution, (Tobi, J.S.C.), as follows*:*

"The Constitution of a nation is the fons et origo, not only of the jurisprudence but

also, of the legal system of the nation. It is the beginning and the end of the legal

system. In Greek language, it is the alpha and the omega. It is the barometer with

which all statutes are measured. In line with this kingly position of the Constitution,

all the three arms of Government are slaves of the Constitution, not in the sense of

undergoing servitude or bondage, but in the sense of total obeisance and loyalty to

it.”

The revenue generating powers in the FG under the 1999 Constitution are clearly overwhelming and a source of conflict and uncertainty in the exercise of tax legislative powers by the Federating units. There are four types of taxes mentioned by name in the Second Schedule to the Constitution[[212]](#footnote-211). In addition, item 59 of the Exclusive Legislative List vests the FG with powers on the "taxation of incomes, profits and capital gains” pursuant to which the Personal Income Tax, Companies Income Tax, Petroleum Profits Tax and Capital Gains Tax have been imposed by the FG, as discussed in the previous chapter. In view of the specific allocation of these taxes to the FG, it might be argued that all other taxes are residual to the States based on the principle of expressio unius est exclusio alterius. It may also be argued that taxation is an inherent power of any government and can only be directly derogated from by an express Constitutional stipulation. It can be said that the taxing powers of each tier of government broadly follow the division of legislative powers under the Constitution. Hence, each tier of government can exercise taxing powers to the extent of its legislative powers and the FG can impose a tax on any of the matters incidental to the 67 subject matters on the Exclusive Legislative List pursuant to its implied power in item 68. This view has received the judicial support of the SC in the case of *Attorney General, Ogun State v Alhaja Ayinke Aberuagb*a[[213]](#footnote-212). However, this decision was made based on the earlier 1979 Constitution which preceded the 1999 Constitution.

The consequence of the structure of taxing powers and allocation of fiscal lists under the Constitution and the attempt by States to capture revenues through the exercise of their taxing right on matters in the Concurrent and Residual Legislative Lists, as highlighted above and discussed in chapter 4 of the thesis , have mainly added to the confusion and lack of clarity in the taxing powers of the federating units and the tax system[[214]](#footnote-213), which also affects upstream petroleum taxation in Nigeria. A further consequence of this state of things is that some of the poorly drafted legislation contributes to the confusion and lack of clarity in the system. In the following section, we examine the regulatory framework and the fiscal arrangements operative in petroleum operations and how this impact upstream petroleum taxation in Nigeria.

**3.3.** **THE PETROLEUM ACT (PA) AND THE FISCAL REGIME**

The Petroleum Act (PA) 1969 is the principal Act regulating petroleum operations in Nigeria. The PA provides for the grant of licences to explore petroleum resources in the country. The structure and duration of licences, the royalties and rent payable, the technology transfer etc., are all provided for under the PA and Petroleum Regulations. The licencing structure for regulating petroleum operations included the concessionary system, where the title to hydrocarbons passes to the investor at the borehole, as well as a contracting arrangement system. The FG receives royalties and taxes in compensation for the use of the resource by the investor. Title to and ownership of equipment and installation permanently affixed to the ground and used for exploration and production of hydrocarbons generally passes to the State at the expiry, or termination, of the concession (whichever is earlier). The investor is typically responsible for abandonment. However, under a contractual arrangement (PSC and Service contracts), the investor generally bears the costs of operation and acquires the ownership of the share of production only at the delivery point. Title to and ownership of equipment and installation permanently affixed to the ground and/ or destined for exploration and production of hydrocarbons generally passes to the State immediately. The variants of this system allow for shared costs and uncertainty associated with the assigned interests and operations. There may also be specific fiscal incentives and tax exemptions including VAT and custom duties waiver or enhanced capital expenditure incentives or allowances. Furthermore, unless specific provisions have been included in the contract (or in the relevant legislation) the government (or the national oil company, “NOC”) is typically legally responsible for abandonment.

Under the PPTA/PA regulatory framework the licenses granted to incorporated companies consist of three categories. TheOil Exploration License (OEL) is for exploration for petroleum and does not confer any exclusive right over the area of the license or preclude the grant of another OEL or of an OPL or OML over the same area or any part thereof. An OEL shall terminate on 31st December following the date on which it was granted, but the licensee shall have an option to renew the license upon the fulfilment of certain conditions.

The second category of license is the Oil Prospecting License (OPL). This license confers exclusive right on the holder of the license to explore, carry away and dispose of petroleum discovered and won in the area. The area covered by an OPL must be compact but not being an area more than 2590 km2 (1000 sq. miles). The award of an OPL creates a contractual relationship between the parties which is statutory in nature. The duration of an OPL shall be determined by the Minister but shall not exceed five years (including any period of renewal). The holder of an oil prospecting license may carry away and dispose of petroleum won during prospecting operations, subject to the fulfilment of obligations imposed upon him by or under the PA. These obligations include any special conditions imposed under paragraph 34 of the First Schedule to the PA or by the PPTA or any other law imposing taxation in respect of petroleum. The oil prospecting license can be converted to an oil mining license.

The last category of license is the Oil Mining License (OML): This type of license is issued to a holder of an oil prospecting license that has satisfied all the conditions with daily production of not less than 10,000 barrels. This license confers exclusive rights on the holder to explore, carry away and dispose of petroleum discovered and won in the area more than 1295 km2 (500 sq. miles). The life span of an OML is usually for a maximum of 20 years but is renewable in accordance with the PA, and the lessee of the license is expected to apply for a renewal of the license not less than twelve months before the expiration of the lease.

The recently enacted Petroleum Industry Act (PIA) essentially retains the same licencing structure, but with new nomenclature i.e., Petroleum Exploration Licences (PEL) for Oil Exploration license (OEL), Petroleum Prospecting Licences (PPL) for Oil Prospecting license (OPL) and Petroleum Mining Leases (PML) for Oil Mining Lease (OML). The PIA specifies mandatory terms for these licences, including a 20-year term for PMLs, and makes allowance for production sharing contracts and joint venture concessions with NNPC Limited. In line with the Nigerian Constitution, the PA restates the Nigerian State ownership of petroleum resources and empowers the Nigerian State or FG to either self-explore or participate in any exploration and development activities of petroleum resources in the country.[[215]](#footnote-214) Section 1 (1) of the PA[[216]](#footnote-215) states that the entire ownership and control of all petroleum in, under or upon any land to which this section applies shall be vested in the State.

The PA[[217]](#footnote-216)vests the Minister of Petroleum Resources (MPR) with the power to grant these three categories of interest from the absolute ownership of the FG.[[218]](#footnote-217) The law provides that a lease or licence under the Act may be granted only to a company incorporated in Nigeria under the Companies and Allied Matters Act (CAMA), or any corresponding law.The Nigerian Court of Appeal in *Nwadioro & 2 Ors. v. Shell Petroleum Development Company of Nigeria Ltd*[[219]](#footnote-218) held that the Petroleum Decree No. 51 of 1969 (now PA) empowers the Minister or Government to grant an oil exploration license (OEL), oil prospecting license (OPL) and oil mining license/lease (OML), to a citizen[[220]](#footnote-219) of Nigeria or a company incorporated in Nigeria under the Companies Act, 1968 or any other corresponding law.

In all the three licenses[[221]](#footnote-220) granted to a company under the PA, the reversionary right is retained in the grantor, which is the FG of Nigeria. A holder of an oil-mining license (OML) may, with the consent of and on such terms and conditions as may be approved by the President, farm out any marginal field, which lies within the leased area. One-half of the area granted under an OML shall be relinquished after a period of ten (10) years. The standard Nigerian OML or licence define petroleum as:

“Mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation”.[[222]](#footnote-221)

With the license to operate, the upstream petroleum fiscal regime consists of the concessionary and contractual arrangements.[[223]](#footnote-222) The predominant commercial and contractual arrangements consist in the main, of the Joint Venture arrangements (JVA)[[224]](#footnote-223) and the Productions Sharing Contracts (PSCs) arrangement.[[225]](#footnote-224) Risk Service Agreements (RSA) are also in use to a limited degree.[[226]](#footnote-225) The joint venture (JV) as the earliest arrangement allows the FG to participate in, and exercise control of, petroleum operations in the country. By this arrangement, the FG, through the NNPC[[227]](#footnote-226), enters into a Joint Operating Agreement (JOA) with multinational IOC’s as joint venture partners.[[228]](#footnote-227) NNPC had a mandate to add value to the country’s hydrocarbon resources for the ultimate benefit of all Nigerians.

The JV arrangement enables both the NNPC and the IOC to carry out exploration and production of crude oil in Nigeria, whilst sharing the financial, technical, and operational risk inherent in upstream O&G activities. However, with a sole-risk model, the prospective IOC may elect to carry-on EP activities on its own, without collaborating or sharing the risk of the venture with the NNPC. Under the concession arrangement, oil companies seeking to carry out EP activities in Nigeria are required to obtain licences and lease permits from the Minister of Petroleum Resources (“Minister”),[[229]](#footnote-228) in line with the PA, to confer legal rights to explore and produce petroleum resources.

The PSC was first introduced in 1973 in the contract with Ashland Oil (Nigeria) in which the oil company was appointed as the pioneer operator.[[230]](#footnote-229) The PSC is both a commercial and a fiscal arrangement instituted to carry out petroleum operations in the deep offshore and inland basin acreages. Under this arrangement, the NNPC or an indigenous company, as the owner of the mineral right (concession), enters a contract with a foreign technical partner designated as Contractor. The Contractors bear all the risks and recover their costs only when oil is discovered in commercial quantities. The profits are shared on a predetermined ratio with NNPC. Royalty is payable based on the terrain of operation and water depth.[[231]](#footnote-230) Cost oil, profit oil and tax oil are then charged on the contract area of the OML.

The other arrangements are the Service Contracts and the Marginal Field[[232]](#footnote-231)operations. With respect to Service Contracts, the Contractors undertake exploration, development, and production activities for and on behalf of NNPC, the concession owner. The Contractors provide the capital and technical expertise required and are reimbursed from the sale of the oil produced. However, the profit of a company engaged in Service Contracts is not subject to Petroleum Profit Tax (PPT), but Companies Income Tax (CIT), as the service Contractor is not regarded as carrying out petroleum operations on its own account[[233]](#footnote-232). What constitutes ‘own account’ has also raised some questions of interpretation.

The fiscal terms and taxation regime for the marginal field concessions have also not been precisely determined and adds to the uncertainty in the upstream petroleum profits taxation which the recently enacted PIA attempts to address, as discussed in chapter 9 of this thesis.

**3.4. PETROLEUM TAXATION AND OTHER TAXES**

The PPTA and CITA are the principal income and profit tax statutes for upstream and downstream petroleum operations. The administration of the principal profit and income taxing statutes and their interaction with other indirect and transaction taxing statutes are also a source of uncertainties in the tax system. In the following paragraphs, we briefly highlight the taxes and the potential areas of uncertainties which are examined in detail in chapter 4 of the thesis.

1. The Value Added Tax Act (VATA), 1993, replaced Sales Tax under the Sales Tax Act No. 7 of 1986[[234]](#footnote-233). Persons liable to VAT include corporates or incorporated entities including corporate entities engaged in petroleum operations. VAT is charged and payable on all supplies of goods and services, (in the VAT Act referred to as “taxable goods and services”) other than those goods and services which are exempt.[[235]](#footnote-234) The VAT Act also relieves a wide range of goods and services from VAT if such supplies (not the acquisition and importation) are “zero rated”. Several consequences flow from the treatment of zero-rated supplies for petroleum operations. We will examine some of these in chapter 4, as they pertain to upstream petroleum taxation[[236]](#footnote-235).

2. The Capital Gains Tax (CGT) under the Capital Gains Tax Act (CGTA)[[237]](#footnote-236) applies to individuals (both residents and non-residents) and companies. It is payable on gains arising from the disposal of chargeable assets and is assessable on an actual year basis. The CGT rate is 10%, and chargeable assets include any buildings, structures or works of a permanent nature, plants, machinery, equipment, furniture, fittings, and fixtures, which means that gains or losses made on the disposal of assets used in petroleum operations will attract CGT. The interaction of the CGTA with the second schedule of the PPTA on qualifying capital expenditure (QCE) and capital allowances (CA) has required judicial intervention as examined in chapter 4 of the thesis[[238]](#footnote-237).

3. Also, the interaction of the PPTA with the Tertiary Education Tax (TET) is another area requiring administrative and policy intervention. The Education Tax Act (ETA), as subsequently amended, introduced the TET and established the Education Trust Fund[[239]](#footnote-238) to finance tertiary education in Nigeria. It imposed on every Nigerian resident company a 2% yearly tax on the assessable profit of the company. For companies engaged in petroleum operations, ET is calculated on the assessable profit and is a deductible cost before the calculation of PPT, although the PPTA does not expressly state so, since this is a later enactment in time.

4. The Niger Delta Development levy, charged on producing companies operating in the Niger Delta region of Nigeria. The Niger Delta Development Commission (Establishment etc.) Act 2000,[[240]](#footnote-239)(referred to as the NDDC Act), repealed the Oil Mineral Producing Areas Commission Decree 1998. The NDDC Act imposes a three (3) percent levy on the total annual budget of any oil producing company operating onshore and offshore in the Niger-Delta Area, including gas-processing companies. This levy is also treated as a deductible expense for PPT calculation. The term ‘the annual budget’ used in this Act has required administrative and judicial review. The controversy relates to whether it refers to the total estimated or actual budget of the oil company, or the annual budget applicable to the Niger Delta operation, and more so, whether this applies to the capital or operating budget? Lastly, the NLCD Act presents its own challenges of implementation. The primary objective of the Act is the domestication of the oil and gas industry in Nigeria, through local value additions to the domestic economy[[241]](#footnote-240). The NLCD Act imposes a 1% levy on the total contract sum awarded in the upstream sector. This levy is deducted at source from the contract value. The challenge here is the lack of clarity on the base to apply the 1% levy. It remains to be seen how the PIA will address these levies and charges for upstream petroleum taxation.

**CONCLUSION:**

The Constitutional exercise of ownership and the concentration of taxing powers in the FG, as well as the interaction of the principal taxing statutes with the other special purpose taxes, indirect and transaction taxes create opportunity for distortions and lack of predictability for the upstream petroleum tax system, as the boundaries between these transaction taxes, levies, and charges and the PPT are not well defined. In the absence of Constitutional review, and definitive judicial reviews and decisions, the challenges of uncertainty will remain an issue requiring reform in the operation of the fiscal federalism under the Constitution, fiscal policy and tax legislation.[[242]](#footnote-241)It also underscores the importance of continuous policy assessment to enhance economic development, and well-defined legislative powers to ensure certainty and predictability of the tax system. Aspects of these are further examined in the chapter 4, as well as in chapter 9, which address the changes introduced by the PIA.

**CHAPTER 4**

**UPSTREAM PETROLEUM OPERATIONS TAXATION UNCERTAINTY**

“The tax which each individual taxpayer is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and to every other person” (Adam Smith). **[[243]](#footnote-242)**

**4. INTRODUCTION**

In this chapter, we examine specific areas of lack of clarity and precision in tax legislation and policy as we carry out a black letter analysis of the relevant tax legislation, as well as interrogate some of the policy, administrative and judicial decisions as they affect upstream petroleum tax legislation certainty. We adopt the broad definition of taxing legislation and tax system uncertainty, as articulated by International Monetary Fund (IMF) and Organization for Economic Co-operation and Development (OECD) studies. These studies define uncertainty in taxing legislation and tax systems as ‘ambiguous areas in tax policy and the tax laws, where taxpayers and tax administrators (and others) might have reasonable but differing interpretations of what the tax laws require’. This definition therefore goes beyond legislative clarity or the concept of certainty and absence of arbitrariness, or the requirement of equity and simplicity of the tax system and accommodates the concept of economic risks and the challenges of interpretation and tax compliance.

The objective of tax law is to ensure the implementation of the desired public policy objectives,[[244]](#footnote-243) as well as to guarantee certainty to taxpayers on the taxes they are liable to pay,[[245]](#footnote-244) and their rights and obligations under the law.[[246]](#footnote-245) It follows that the tax assessed on a taxpayer by statute ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to both the taxpayer and the tax administrator. Ambiguity in language and a lack of precision in legal or statutory terms, policy and principles can result in inconsistency of meaning and understanding of substance of policy and tax legislation. An effective and certain tax system and tax law should spell out the matters within the scope in a precise manner, devoid of unnecessary complications that could impair understanding of the provisions. Where the fiscal policy and tax principles and law fail the certainty or precision test, tax uncertainty will prevail in the tax system.[[247]](#footnote-246)

Consequently, the requirement of certainty[[248]](#footnote-247) covers all levels of legal impact, including clarity of fiscal policy,[[249]](#footnote-248)tax policy,[[250]](#footnote-249) legal terms, sustainability, and validity of judicial acts, as well as the stability of the legal relationships that develop. In general, the level of certainty of the legal system can be judged by the degree of predictability of the results obtained while resolving legal disputes.[[251]](#footnote-250)

The language, principles and policy objectives must be clearly and consistently stated and understood. The tax system must offer clarity and a clear distinction between the different income and profit taxes, as well as the transactions taxes. The tax obligations must be precisely stated to avoid any confusion with the tax charge arising by different interpretations and a misunderstanding of legislation. In this respect, the significance of competent and principle-based legislative drafting in achieving clarity, certainty, and consistency (CCC) of understanding and interpretation of the upstream petroleum tax legislation and system in Nigeria cannot be over emphasized.

Unfortunately, uncertainty and fragmentation in tax law are major problems to be overcome by policy makers or designers. As is the case with petroleum taxation generally in Nigeria, the interaction of the general Corporate Income Tax Act (CITA) with the principal Petroleum Profit Tax Act (PPTA), as amended by the PSC Act, as well as with the various other special purpose and transactions taxes, largely due to fiscal and tax policy inconsistencies, the age of legislation and the pressure for increased government take or revenue capture, coupled with the challenge of language and incompetent drafting, have resulted in blurred boundaries and conflict between the numerous taxes in the tax system.

Fiscal and tax policy makers and the legislative draftsmen are obligated to ensure that tax policy objectives and legislation are well articulated and properly aligned. The tax administrators, taxpayers, judges, and tax practitioners are to be engaged actively in ensuring that the objective of clarity and certainty in the substance and form of legislation is achieved.[[252]](#footnote-251) It is an issue for taxpayers, be they individuals or corporate entities, in that clarity and predictability is required for planning and making investment decisions, as well as in creating a stable domestic and international environment for cross border transactions. Tax certainty should therefore be understood as a common framework of rules and procedural standards, geared to creating a level playing field and providing long-term conditions suitable for investment. It should produce effective and clear tax laws and regulations, provide capable tax and customs administration, and set up swift and transparent mechanisms for dispute resolution.

In the following sections, we carry out a black letter analysis of the relevant legislation and the specific policy interventions, as well as judicial decisions which highlight the impact of these fragmentations and resulting lack of clarity in upstream tax legislation, regulation, and tax system.

**4. 1. UPSTREAM PETROLEUM POLICY AND TAX LEGISLATIVE UNCERTAINTY**

Upstream petroleum operations involve significant costs, long lead times and long investment recovery periods. It is important for planning investments that there is clarity in fiscal policy and certainty in tax law for effective tax administration, compliance, tax dispute resolution and revenue generation for government. It is also key to the preservation of shareholder value as well as critical to creating a stable economic environment guaranteeing a reliable and stable tax and legal system. As Hans Gribnau puts it, being uniform for one and all.[[253]](#footnote-252) Conversely, the uncertainty of tax legislative terms or provisions allows for the possibility of unlimited and unjustified discretion in their interpretation and application, which inevitably provokes disagreements, disputed assessments, and conflicts, as well as the possibility of tax evasion or non-compliance. The lack of certainty turns the law into its opposite, namely, chaos and arbitrariness.[[254]](#footnote-253)

In carrying out the black letter analysis of some of the provisions of the PPTA, PSC Act and CITA, we assess the underlying taxing principles and fiscal policy objectives of these Acts and the clarity of these legislative provisions. Tax statutes and tax provisions should be interpreted literally. Any attempt to explore objects and purposes might therefore lure the judge into a pro-executive attitude. The temptation to toy with the idea was finally removed by the judgment of Lord Halsbury in *Tennant v. Smith* (1891): when he stated:

“. in a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes. In various cases, the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this; that inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject of taxation, you must see whether a tax is clearly imposed. Cases, therefore, under the taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation.”.[[255]](#footnote-254)

Also, as Rowlatt J. stated in *Cape Brandy Syndicate v. I.R.C,*

“In a taxing Act one has merely to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”[[256]](#footnote-255)

These all emphasize the need for properly defined terms, concepts and provisions, as well as a rule based, transparent and structured review of tax statutes to enhance clarity and accuracy and to avoid subjective interpretation and implementation by the taxpayer, tax administration and the judiciary.

The PPTA[[257]](#footnote-256) as amended by the PSC Act, interacts with other profit and income taxing Acts, such as Company Income Tax Act (CITA), the Capital Gain Tax Act (CGTA), the Tertiary Education Tax Act (TETA), the Value Added Tax Act (VAT), as well as other subsidiary taxing Acts imposing special purpose levies or charges on petroleum operations as highlighted in chapter 3. The interaction of the PPTA with these taxing statutes and laws has exposed some of the weaknesses of the PPTA, particularly as an ageing legislation, with some concepts that may have lost relevance and language acuity, etc. It has also revealed the lack of clarity and alignment in developing fiscal and commercial objectives in tax law making. Instances of poor drafting as well as the introduction of poorly defined tax avoidance objectives in subsequent income and subsidiary statutes such as CITA, TET, NDDC and NLCDA, coupled with the failure to review and ensure sustained fiscal and tax law reform have all contributed to creating ambiguities, lack of consistency in understanding and clarity in upstream tax legislation and administration.

In addition to the number of taxes affecting upstream petroleum operations, and the fragmented nature and language of the legislation and regulations in the petroleum tax system, the taxation of petroleum profits is impacted by the various fiscal policy interventions, regulations and administrative agreements or Memorandum of Understandings (MOUs) between the Federal Government and the various oil companies. Until the amendment of the PPTA by the PSC Act, the Memorandum of Understanding (MOU)[[258]](#footnote-257) stands out as having impacted petroleum operations and taxation greatly, in that it sought to establish some level of certainty and stability in upstream petroleum taxation by encouraging investment during the era of low oil prices. The MOU was an agreement between the Federal Government, NNPC and the various oil companies, the aim of which was to guarantee a certain minimum level of profit to the companies after the deduction of all allowed costs, taxes, levies, and royalties. The MOU guaranteed the profit margin, and other incentives granted such as the reserves addition bonus (RAB) and investment tax credits. Each MOU signed between the Nigerian National Petroleum Corporation (NNPC), representing the Federal Government of Nigeria on the one hand and the operating companies (OPCOS) in JV arrangement with NNPC; i.e. - Shell, Mobil, Chevron, Agip, Elf, and Pan Ocean on the other hand, with the aim of anticipating developments in the global oil and gas industry by ensuring a dynamic approach to drawing up rules and fiscal regimes which kept the industry competitive and investor friendly. The clear intention of the government then was to attract more investment than that already made. That significant fiscal and tax policy shift guaranteed for the companies a minimum profit margin of $2.30/bbl.; after tax and royalties on the companies’ equity crude. With the shift, the companies were encouraged to embark on bullish exploration activities, which enabled Nigeria's crude oil reserves to move from 18.0 billion barrels to 22 billion barrels in 1992, barely a year after the policy decision was taken. The MOU contained a mechanism for review in a way that both parties (NNPC and its Joint Venture partners) are left satisfied even when the dynamics of the economy such as inflation and exchange rates set in. Unfortunately, the review process was not sustained, and the MOU remained a policy document, and was not incorporated into the tax law. The MOU has since been overtaken by other developments in the Nigeria petroleum industry and legislative regulations. Although the MOU may have guaranteed profit margins and sustained investment during low oil prices, it however failed to achieve certainty or secure stability and predictability in the upstream petroleum fiscal and tax system.

The other costs and factors affecting the determination of upstream petroleum company’s tax liability are the rents, fees, and royalties payable by a petroleum company. These charges are deducted in determining the rates of petroleum profits tax[[259]](#footnote-258). However, until the amendments to the PPTA in 1996 and 1999[[260]](#footnote-259) on the treatment of these expenses, the absence of specific provisions dealing with each of these fees, charges and taxes, resulted in the reliance on the provisions of the Petroleum (Drilling and Production) Regulations; a subsidiary legislation made pursuant to Section 9 of the Petroleum Act.[[261]](#footnote-260) This also added to the ambiguity in the PPT treatment of the expenses. The amendments to the PPTA and the PA, including the Petroleum (Drilling and Production) (Amendment) Regulations of 1996[[262]](#footnote-261), by the various subsequent legislations such as the Nigerian LNG Fiscal Incentives Guarantees and Assurances Act[[263]](#footnote-262); the Nigerian Export Free Zone Act[[264]](#footnote-263); the Education Tax Act[[265]](#footnote-264) and the Value Added Tax[[266]](#footnote-265), the NDDC levy and the NLCD charge, which are highlighted in the preceding chapter 3 of this thesis, and examined further in this chapter have all impacted the PPTA fiscal and tax regime.

It is against this background, that section 2 of the PPTA, which defines petroleum operations and refers to the taxation of profits from the winning of petroleum in Nigeria, raises several issues. The expression, ‘winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account’ is not defined by the PPTA. The reliance on the common meaning or usage of the expression invariably resulted in questions, such as which party can be said to have title to the petroleum; who is the party carrying out petroleum operations on its own account; who derives the revenue subject to tax under the PPTA, and what taxes or charges affect petroleum operations? These issues are critical for revenue recognition and ascertaining the obligation to taxation. The changes introduced by the recently enacted PIA as it affects royalty, hydrocarbon tax (HT) and CITA address some of these issues. This is examined in detail in chapter 9 of this thesis.

The determination of the taxable entity engaged in petroleum operations for its own account has practical implications for both the traditional JV fiscal concessions and the PSC arrangements[[267]](#footnote-266) which recognize and tax revenue from concessioned contract areas as opposed to legal entities recognized and taxed under the PPTA. Parties or companies with interests in concessions are deemed to carry out petroleum operations for their own account, and this derives from having title or interest in the concessions. However, in the PSC arrangements, companies carry out petroleum operations as Contractors to the Corporation or Holder of the license to the oil concessions granted under a PSC. The Contractors are also entitled to share in the production from the ‘Contract Area’ as defined. However, the question has been whether the Contractors are carrying out petroleum operations on their own account in a PSC setting. It has been argued that, in line with the PSC Act, PPT liability is due on the Contract Area,[[268]](#footnote-267). Contract area is defined in the relevant PSC’s as the surface area specified in the Annex to the PSC which includes the geological formations contained in the vertical projection of such surface to the depth indicated in the Annex to the PSC, in which the Contractor is authorized and obligated to conduct Petroleum Activities pursuant to the PSC, it being understood that: (i) the PSC does not grant the Contractor any real property rights to the [Contract Area](https://www.lawinsider.com/dictionary/contract-area) or to natural resources in its subsurface, and (ii) the Contract Area shall be reduced in accordance with the terms of this Contract. However, it has been argued that all parties engaged in the Contract Area are carrying out petroleum operations on their own account. This interpretation is not immediately clear from the definition of Contract Area for PSC purposes, and thus has raised questions of interpretation in the prescription and ascertainment of tax liability under the standard PSC.

Also, on the issue of the taxable profits from petroleum operations, section 8 of the PPTA only states that there shall be levied upon the profits of each accounting period, a tax (PPT) to be charged, assessed and payable in accordance with the provisions of the Act on profits from the winning of petroleum in Nigeria. The section states as follows:

“There shall be levied upon the profits of each accounting period of any company engaged in petroleum operation during that period, a tax to be charged, assessed and payable in accordance with the provisions of this Act”.

The scope of section 8 has been interpreted in several judicial authorities.[[269]](#footnote-268) The Supreme Court (SC) in *Shell Petroleum Development Company Nigeria Ltd v Federal Board of Inland Revenue*[[270]](#footnote-269)held that by virtue of *section 8* of the *PPTA*, any company engaged in petroleum operations is liable to pay PPT and such tax is deemed a debt due to the FG. Typically, the activities undertaken in a fiscal regime arrangement, and which fall within the context and definition of “petroleum operations”[[271]](#footnote-270), attract PPT, whilst any other activities undertaken by an oil company, not deemed to be petroleum operations, are subject to corporate income tax rules under the CITA. The definition of petroleum operations and what constitutes the revenues and profits from petroleum operations are not as precise as would be required for the determination of the taxable profit which is critical for ascertaining the tax liability and the obligations and the treatment of revenues and costs. The clarity of these provisions raises several questions, particularly due to the interaction of JV, the PSC fiscal regimes and the interaction of the PPTA as amended by the PSC and affected by the CITA with other related income tax and transaction taxes in the petroleum tax system.

The SC further held in *Shell Petroleum Development Company (Nig.) Ltd v Federal Board of Inland Revenue*[[272]](#footnote-271)that petroleum operations for the payment of profit tax by companies engaged in petroleum operations include not only winning or obtaining petroleum oil by drilling, mining, etc., but all operations that are incidental to such operation. The legal implication is that income from activities such as refining crude oil, marketing solid minerals, oil field services, etc., are not subject to PPT since these are not incidental but distinct activities carried out in the midstream and downstream sectors in the industry.

To ascertain PPT payable by a company engaged in petroleum operation, section 9 (1) of the PPTA states that all the revenue accruing to the company during the accounting period is the aggregate of:

a). proceeds of all chargeable oil sold by the company during that period,[[273]](#footnote-272)

b). value of all chargeable oil disposed by the company during the period,[[274]](#footnote-273)

c). value of chargeable natural gas sold,[[275]](#footnote-274) and

d. all income incidental to and arising from one or more petroleum operations, e.g., interest on fixed deposit, rent/hire of equipment, income from services provided to another petroleum company, etc.

In the same vein s.9 (2) (a) PPTA requires the value of oil to be determined “in accordance with the provisions of any enactment applicable thereto and any financial agreement”.[[276]](#footnote-275) The financial agreement and the now moribund MOU refer to ‘Realizable Price’(RP) between the FG of Nigeria and the company. Additionally, s.23 (5) defines ‘posted price’ in relation to crude oil valuation, as “the price (of crude oil), at the Nigerian port of export…established by the company, after agreement with the Government of Nigeria”. The reference to both realizable price (RP) and posted price (PP) and existing financial agreements between the government and the companies created more confusion. There was also no distinction between the sale price of local or foreign sales.[[277]](#footnote-276) The lack of clarity and precision required in determining the profit subject to PPT only added to the confusion in interpretation and the regulatory and compliance environment. This was the subject of the TAT ruling in 2015 in the longstanding case between the FIRS and the Oil Companies[[278]](#footnote-277). The TAT ruled that the applicable price of crude oil to be used for tax purposes is the RP and not the Official Selling Price (OSP) during the period the MOU between the FG and the companies remained in force[[279]](#footnote-278). The TAT ruling did not however fully resolve or define what constitutes RP, by stating the components and the procedure for determining the RP and revenue for PPT purposes, nor did it address the question whether the MOU introduced a new fiscal regime predicated on an agreement (the MOU) between government and the oil companies, in contra distinction to PPT regime under the PPTA.

**Allowable Expenditure for Petroleum Profit Tax Uncertainty.**

Section 10 (1) PPTA states the general principle for ascertaining and allowing deductible expenditure for petroleum profits tax. The section states that all outgoings and expenses “wholly, exclusively, and necessarily (‘WEN' test) incurred”, whether within or outside Nigeria, during an accounting period by the company for the purpose of those operations shall be allowable expenditure in arriving at the assessable profits for PPT purposes. However, the precise scope of the WEN expense test is not expressly defined and had to be interpreted by the Court. Moreover, in its application, the WEN test is impacted by extra-statutory agreements between the FG and the companies. This was the subject matter in the case of *Shell Petroleum Development and Production Company of Nigeria (SPDC) v. Federal Board of Inland Revenue.*[[280]](#footnote-279)The tax authority (FBIR) had disallowed the deduction of Central Bank of Nigeria (CBN) commission, scholarship expense, and the difference in exchange (DIE) expenses incurred by SPDC on the basis that the expenses were not ‘wholly, exclusively, and necessarily’ incurred during and for petroleum operations. The matter went through the Appeal Commissioners (now replaced by the TAT) and eventually got to the Supreme Court (SC). The SC held that with respect to CBN commission, there is a statutory or contractual obligation to incur the CBN commission expenses in the payment of PPT, and as such, the expense is deductible for the computation of the PPT, even where it is not a direct activity of carrying out petroleum operations by the taxpayer. The SC held that SPDC was entitled to deduct all three categories of expenses since it had a statutory obligation to incur the said expenses. The court went further to state that bank charges qualify for deduction under the general provisions of s10 (1) of the PPTA[[281]](#footnote-280). Uwais, C.J.N, succinctly stated the position as follows:

“It seems obvious that in computing the adjusted profit of the appellant, bank charges cannot be deducted under the provisions of section 10 subsection (1) (G). This is because the Central Bank of Nigeria, as rightly held by the Court of Appeal (per Awogu, J.C.A) is neither the Federal Government of Nigeria, nor Government of any State nor a Local Authority. However, the situation differs with regard to the provisions of section 10 (1) simpliciter. What needs to be determined thereunder is the question of whether the payment of bank charges arose in the course of the operations of the appellant as defined under the definition of ‘petroleum operations’ in section 2 of the Petroleum Profit Tax Act”.[[282]](#footnote-281)

The expense ‘deductibility test’ under s.10 (1) has thus been interpreted to mean ‘solely’ or ‘entirely’ incurred for petroleum operations. However, for expenses incidental to petroleum operations, the SC held that such expenses, “must be expenses wholly, exclusively, and necessarily incurred for the purpose of petroleum operation”[[283]](#footnote-282)*.* The deductions allowed by virtue of the provisions of section 10 (1) of the PPTA are however expressly limited by the items identified as non-deductible under section 13[[284]](#footnote-283).

The facts of the *SPDC v FBIR* case partly illustrate the consequences of the policy intervention, in either facilitating or enhancing certainty of tax legislation and stability or otherwise in the tax system, as well as in the judicial process. The government directive on payment of tax liabilities in UK pounds sterling was not anticipated in the poorly defined provisions on deductibility of petroleum operations related expenses. The FGN had entered into an agreement with the oil companies in 1972. The Agreement required oil companies to pay all oil revenue proceeds to the CBN through the Bank of England with a formula for determining the currency exchange rate to be used by the companies in making their lodgments. The extra-statutory Agreement provided that if there is a difference between the exchange rate applicable under the Agreement and the rate prevailing in currency markets, an exchange gain or loss would arise in the hands of the oil company. In this case the company (Shell) sought to take a tax deduction of the exchange loss in computing its PPT liability. Shell had spent a greater sum in Nigerian currency to pay tax levied, due to the difference in exchange (DIE). The court process took several years to resolve the issues, and the matter went through the TAT, and through the court of first instance before SC finally decided, thus adding to the air of uncertainty on the treatment of these expenses for PPT purposes.

The Court’s opinion was that under section 11(1)[[285]](#footnote-284) of the Act, the company could not ordinarily deduct the expense but noted that the losses arose pursuant to the provisions of the Petroleum Act, and the requirement of the company to pay its tax in an unusual manner in pounds sterling. The Court, therefore, concluded that Shell was entitled to deduct, in computing the PPT payable, the “exchange losses” it incurred in making payments to the Government in pounds sterling in London. The obvious challenge here derived from the fact that the pertinent tax provisions of the PPTA did not anticipate that the issue of the currency of payment or the fact of an administrative directive to enforce a policy position would have a significant tax cost and implication. Also, the absence of an effective administrative procedure for speedy resolution, and long delays experienced in litigating the matter through the TAT and the court system, all added to the uncertainty in the tax system.

Similarly, in *Gulf Oil Company (Nigeria.) Limited v. Federal Board of Inland Revenue,[[286]](#footnote-285)* the question was whether the charges and commissions paid by Gulf Oil to the CBN, following the Government directive to pay the company’s PPT overseas, were expenses “wholly, exclusively and necessarily incurred” for the purpose of the company’s petroleum operations within the meaning of section 10 (1) of the PPTA. The Court relied on the decision in the *Shell case* and held in favor of Gulf Oil. In both cases, the interaction of the principal taxing statute, i.e., the PPTA and its poorly defined terms or absent definitions, with an extra-statutory agreement/directive, meant that judicial interpretation was needed to achieve clarity in implementation of a policy objective of the FG. In the above scenarios, the precise intent and literal reading of the relevant provisions[[287]](#footnote-286) could practically lead to multiple and perfectly valid interpretations as the underlying policy may not have been anticipated, and the taxing provisions were not entirely precise and helpful to resolve any gaps.

With respect to the deductibility of interest due on borrowed sums,[[288]](#footnote-287) section 10 (1) *(g)* allows for a deduction of all sums incurred by way of interest on any inter-company loans obtained under terms prevailing in the open market, that is, the London Inter-Bank Offer Rate (LIBOR). However, Section 13(2) states that no deduction shall be allowed in respect of sums incurred by way of interest where:

*(a)* either company has an interest in the other company; or

*(b)* both have interests in another company either directly or through other companies; or

*(c)* both are subsidiaries of another company.

The existence of both s.10 (1) (g) & 13(2) on the same subject matter of affiliate interest deductibility generated confusion in interpretation and application. The apparently conflicting provisions of ss.10 (1) (f) & (g) and 13(2) on the subject may be attributed to poor drafting and non-clarity in the tax avoidance objective of Government.

In the case of *Nigerian Agip Oil Company Limited v FIRS* [[289]](#footnote-288)the court examined the concept of “expense deductibility” in the process of determining the deductibility of interest incurred on capital sums borrowed by Nigeria Agip, from its related entity*.* The Court conducted a historical review of the PPTA[[290]](#footnote-289) starting from 1959 until 1999, to arrive at its decision. The Nigeria Agip Oil company had taken a loan from its sister corporation (Eni) in 2001.[[291]](#footnote-290) It had repaid the instalments between 2001 and 2011, along with interest. The terms of the loan were open market and satisfied the London Inter-Bank Offer Rate (LIBOR). FIRS sought to disallow the deductibility of the interest by Agip, by relying on s 13(2) of PPTA, which was originally enacted in 1959. On the other hand, Agip relied on the 1999 amendment to the *PPTA* as contained in *section 10(1) (g)*, which expressly allowed deductibility of interests paid on loans between related corporations, in so far as the terms of the loan were open-market and satisfied the LIBOR rule.

The Court had to determine which of the clearly conflicting legislative provisions in PPTA would apply in the matter. In resolving the issue, the Court adopted the dictum of Tobi JCA (as he then was) in *Onagoruwa v. The State*,[[292]](#footnote-291) i.e., that one can examine the legislative history of an Act of Parliament to determine, construe and interpret the law. The Court upheld and allowed the deductions by Agip Oil, by holding that the legislative intent was to allow *section 10(1) (g) PPTA*as an exception to the restriction imposed under *section 13(2) of PPTA*. Moreover, and in any case, the amendment to section 10 was later in time than section 13(2) PPTA. It is important to add here, that the intent of s.10 (1) (g) is rather clear. It allows the deduction of interest expense obtained at open market rate and was intended to override s.13 (2). The proper thing to do to avoid the conflicting provisions is that s.13 (2) should be amended, and a proviso added to reflect the position in s.10 (1) (g). Unfortunately, this correction or alignment of provisions had to be through a TAT decision and the Court.

**Gas Fiscal Policy and Tax Regime and Tax Legislation Uncertainty**:

The FG policy of encouraging investment in gas utilization through the provision of fiscal and tax incentives has been another source of uncertainty in the petroleum tax system. The policy provided a gas-pricing framework for the determination of the floor price for gas, with a view to promoting domestic gas utilization, especially for power generation and industry. The Petroleum (Drilling and Production) Regulations provide for the submission of detailed plans for the utilization of associated gas. To curtail gas flaring and encourage investment in gas, the Associated Gas Re-Injection Act was promulgated in 1979. The Act provides that, in addition to the plan to be submitted under the Petroleum Regulations, every company producing oil and gas in Nigeria must submit a preliminary program or scheme for the viable utilization of all associated gas produced from a field or groups of fields, project or projects to re-inject all gas produced in association with oil but not utilized in an industrial project. Following however the introduction of the Associated and Non-Associated Gas Framework Agreements[[293]](#footnote-292) the principal upstream and downstream taxing Acts of PPTA and the CITA were amended to incorporate the fiscal and tax incentives for upstream and downstream gas exploitation and taxation. The incentives essentially sought to leverage on oil capital expenditure to exploit gas. This approach created overlaps and areas of uncertainty in both pieces of legislation.

For instance, section 11 of the PPTA[[294]](#footnote-293) as amended makes available fiscal incentives to upstream gas utilization operations, i.e., the separation of crude oil and gas from the reservoir into usable form and for onward delivery to downstream projects. The incentives include capital investment to separate crude oil and gas from a reservoir into usable form. The costs for the separation are considered as part of the oil field development costs, and therefore treated as an allowable expense for PPT. Capital investment on facilities and equipment used to deliver associated gas in usable form at utilisation or designated custody transfer points are treated as part of the capital investment for oil development.

In effect, capital allowances (CA), operating expenses and the basis of assessment to PPT are subject to the provisions of the PPTA and the terms of the revised MOU[[295]](#footnote-294) between the FG and its joint ventures. The incentives are, however, only granted to petroleum companies that are engaged in projects that utilise associated gas.

There were also provisions aimed at preventing the lumping of expenses together to reduce the taxable profits under the PPTA. The provisions specifically stated that condensates extracted and re-injected into the crude oil stream will be treated as oil (and therefore taxable as oil income), but condensate not re-injected will be "treated under existing tax arrangements". The company must, where practicable, keep the expenses incurred in the utilisation of associated gas separate from those incurred on crude oil operations. Only expenses that cannot be separated will be allowed as a deduction against the company's crude oil income. Expenses identified as incurred exclusively in the utilisation of associated gas will be regarded as gas expenses and will only be allowable against the gas income and profit to be taxed under the CITA.[[296]](#footnote-295) The relevant PPTA and CITA provisions granting these incentives lacked the required clarity or precise provisions to cater for and address clearly and specifically the cost attribution principles to implement these special incentives, targeted only at the companies engaged in gas utilization projects. The consequence of this was that it resulted in implementation challenges and distortions in the tax system. In addition, the basis for allocation of each cost head in the fiscal incentives regulations and taxing Acts were not clearly delineated or precisely defined and thus created areas of uncertainty in both the upstream and downstream petroleum tax system.

For instance, section 11(1) (d) of the PPTA states that investment required to separate crude oil and gas from the reservoir into usable products which is considered as part of the oil field development, and capital investment on facilities equipment to deliver associated gas, shall be treated for tax purposes as part of the capital investment for oil development, but it failed to provide the basis for ascertaining these expenditures. Moreover, the incentives were granted subject to the conditions stated in s.11 (2), i.e. that the condensates extracted and re-injected into the crude oil stream shall be treated as oil but those not re-injected shall be treated under existing tax arrangements; and, where practicable, the expenses incurred were to be kept separate from those incurred on crude oil operation, and only expenses not able to be separated shall be allowable against the crude oil income of the company under this Act. The guidelines for segregating and allocating expenses were, however, not stated. The absence of these clear guidelines in the relevant tax legislation contributed to the lack of clarity in legislation and presented implementation and compliance challenges for achieving the fiscal objectives of the incentives. The implementation challenges and the resulting confusion in the tax legislative intent also had to be examined in the *Nigeria Agip case*, where the Court held, that despite the treatment of gas capex for associated gas development as oil capex under the PPTA, the resulting income would be subject to income tax under CITA.

Similarly, section 39 of CITA, extending the fiscal incentives to cover non-associated gas development and production, also was a source of uncertainty[[297]](#footnote-296). The piece-meal amendments to both the PPTA and CITA respectively, to accommodate these and many other changes, further raised issues of lack of clarity of terms as well as legislative interpretation and compliance. These developments as well as the approach of introducing PSC fiscal concepts and contractual terms to the PPTA further highlighted the need for a comprehensive review of the O&G taxation under PPTA or CITA, due to the absence of principle-guided, clear, and coordinated fiscal policy definition and rule-based legislative drafting.

**4.2 THE PETROLEUM PROFITS TAX ACT (PPTA) AS AMENDED BY THE PRODUCTION SHARING CONTRACT (PSC) ACT.**

The PSCs were conceived to address issues arising from onshore JV petroleum operations and poor funding and inadequate capacity of the parties to the JVAs, and generally introduced and applied to the deep and shallow waters acreages. Under this arrangement the Nigeria National Petroleum Corporation (NNPC) engages a competent contractor (Petroleum Exploration and Production Companies or its Subsidiary duly registered in Nigeria) to carry out petroleum operations in Nigeria.

The PSC Act, was therefore enacted as a later legislation in time, amended the PPTA to incorporate the PSC fiscal regime within the PPTA concession regime. The amendment of the PPTA regime by the PSC fiscal terms clearly highlighted the importance of fiscal policy clarity and alignment in achieving legislative certainty. Section 1 of the PSC Act states that; ‘notwithstanding anything to the contrary contained in any other enactment or law, the provisions of this Act shall apply to all PSC’s as defined in section 17 of the Act’. Also, section 3 (1) of the PSC Act states that the PPT payable under the PSC regime shall be determined in accordance with the PPTA; provided that the PPT applicable to the ‘Contract Area’ as defined in the PSC shall be 50 per cent flat rate of chargeable profits for the duration of the PSC[[298]](#footnote-297).

The PSC Act specifically gives effect to the fiscal incentives contained in the various PSCs signed by the O&G companies operating in the Deep Offshore and Inland Basin areas under PSCs with the Corporation (NNPC) or other companies holding OPL or OML in the deep offshore and inland basins, whereas the PPTA specifically provides for the imposition of PPT on the chargeable profits of companies involved in the upstream activities of exploration, drilling, extraction and transportation of crude oil. From inception in 1959, the PPTA has undergone a series of amendments culminating in the Petroleum Profits Tax (Amendment) Act of 2007, which included the major changes enacted by the PSC Act. The PSC amendment was a major change to the PPTA, and introduced several shifts to the treatment of key aspects of PPT, including the rate and the basis of assessment and charge to the PPT. The PPTA as amended through the several amendments and the PSC Act failed to anticipate the significant and contentious issues arising from the changes.

The approach of directly introducing PSC commercial and fiscal terms into the existing PPTA fiscal and legislative framework exposed some gaps in the PPTA and resulted in several unclear and contentious issues, some of which have gone to arbitration. One such gap is the fact that the various PSCs and PSC Act do not specifically address gas production or taxation. The Contractors are required to engage with the FG or the Corporation to agree terms for producing gas where there are gas finds. This is obviously a significant gap in the PSC fiscal regime, and another source of uncertainty in the petroleum tax system. The issues arising further highlight the challenge of designing a tax system that strives to unite two different legislative and taxing frameworks, with perhaps competing objectives.

The PSC Act is the codification of the 1993 & 1998 variants of the PSC fiscal terms. The existing PPTA tax regime envisaged a concession arrangement. It has long been in dire need of a comprehensive review to meet the fast-evolving changes of a complex industry. The introduction or imposition of PSC commercial and contractual concepts to the PPTA fiscal framework, therefore, presented some principle-driven law-making and legislative drafting challenges, and opportunity to address the gaps and ambiguities in the PPTA framework. Whilst section 8 PPTA states that PPT is levied on the profits of each accounting period of any company engaged in petroleum operations, the PSC Act introduced the concept of tax oil determined on a ‘Contract Area’ basis. Moreover, the PSC Act introduced other concepts such as ‘cost oil’ and ‘profit oil’, which are to be calculated by the Contractor on behalf of the Corporation and the Contractor itself. Moreover, there was no common understanding of the key PSC terms and concepts, such as, cost or profit oil and tax oil. These issues are relevant for the determination of the tax and chargeable PPT on the PSC Contract areas.

Also, the cost recovery mechanism under the PSC requires the approval of the Corporation, for the expense to be recognised for cost deduction by the Contractor or Corporation. This additional or different level of expense test, in the case of certain cost deductions, such as financing interest deductibility and CA, presented both conceptual and interpretational challenges. As discussed earlier, the WEN deductibility requirement under the PPTA had its own challenges, and the addition of the cost oil recovery and Corporation approval requirement was an additional layer or unwanted cost stress test for the upstream PSC /PPTA regime.

In effect, the absence of a common understanding on many PSC concepts or agreement on the basis for determining such key reliefs and allowances, such as CA, investment tax credit, or allowances on the capital expenditure was therefore a source of uncertainty in the Upstream PPT regime, as amended by the PSC terms. Section 4 (1) of the PSC Act states that NNPC as "the Corporation" or the Holder and the Contractor incur qualifying capital expenditure, wholly, exclusively, and necessarily for the purposes of petroleum operations carried out under the terms of a PSC. Investment tax credit (ITC), a credit uplift on CA in the PSC’s signed in 1993, is due to both the Corporation and the Contractor at a flat rate of 50 per cent of the qualifying expenditure for PSCs. The PSCs signed after 1st July 1998, on the other hand, attract Investment Tax Allowance (ITA) at the PPT rate of 50 per cent on the qualifying expenditure[[299]](#footnote-298) The Corporation, as holder of the licence and legal owner of capital expenditure incurred on the asset for the PSC petroleum operations, has contested the basis of computing the CA, the ITC, and the ITA, citing an earlier, but overtaken, amendment of the PPTA[[300]](#footnote-299).

Under the PPTA, chargeable tax[[301]](#footnote-300) is levied on the profits of the company engaged in petroleum operations during each accounting period of any company. For a company engaged in petroleum operations under a PSC arrangement, section 12 of the PSC Act states that the chargeable tax of the company from its petroleum operations in a ‘Contract Area’ is split between the Corporation and the Contractor in the same ratio as the split of ‘profit oil’ as defined in the PSC executed between the Corporation and the Contractor. The point of divergence in treatment between the PPTA and the PSC Act, is that, whilst the PPT charge to tax under the PPTA is on the entity, the PSC charge is the Contract Area. Also, section 22(3) of the PPTA as amended by the PSC Act, states that, in computing the tax payable, the investment tax credit shall be applicable in full to petroleum operations in the Contract Area such that the chargeable tax is the amount of the assessable tax less the investment tax credit, whilst the chargeable tax computed under subsection (3) of this section shall be split between the Corporation and the Contractor in accordance with the proportion of the percentage of profit oil split. This makes the charge to tax a function of a profit oil split computed on a ‘Contract Area’[[302]](#footnote-301)and affects the basic premise on which expense deductions and CA are computed in arriving at the charge to tax under s 8 & s 9 of the PPTA. Section 12 of the PSC Act amends the PPTA in this regard to accommodate this PSC arrangement[[303]](#footnote-302). The PPTA obviously did not anticipate the variables such as ‘royalty oil’, ‘cost oil’,’ profit oil’ and ‘tax oil’ introduced by the PSC. It may be observed that a comprehensive, principle-guided review of the PPTA to accommodate the PSC arrangement would have better resolved the confusion and the lack of consistent understanding and interpretation of these concepts and terms in the determination of PPT liability.

Moreover, section 9 of the PSC Act states that ‘tax oil’ is to be allocated to the Corporation or the Holder as the case may be, in the quantum required to generate an amount of proceeds equal to the actual PPT liability. The PPTA basis for determining PPT chargeable profits and PPT liability clearly did not anticipate shared or split QCE and CA, investment tax credit (ITC) or allowances (ITA), and split chargeable profit oil. The PPTA, also did not anticipate sharing of production or revenues from a Contract Area for the determination of PPT. The PSC Act also failed to state the basis for ascertaining ITC/ITA for PSC purposes, thus allowing its determination under the PPTA, on an entity basis, rather than by Contract Area.

Also, for PSCs, the PPT is computed by the Contractor on behalf of itself and the Corporation, and then forwarded to the Corporation or the Holder. Another area of ambiguity in the PSC Act is the fact that it is silent on whether the Corporation should adopt the PPT as computed by the Contractor or is obliged to review and revise same as it deems fit. The Corporation has adopted the view and position that it is obliged to compute the PPT liability due on the Contract Area on behalf of itself and the Contractor, using production volumes not in line with the agreed PSC production quotas, and costs, for computing the PPT liability of the parties to the PSC[[304]](#footnote-303).

In summary, fiscal policy non-alignment between the Concession system arrangement and Production Contract system arrangement under the existing PPTA framework as amended by the PSC Act and more specifically, the combined effect of sections 3, 9 & 12, of the PSC Act, applied along with the relevant sections of the PPTA, including ss 8, 9, 10 & 22 and the second schedule of the PPTA on CA, has resulted in the use of terms and concepts not consistently understood by both the Corporation and the Contractor. Therefore, this interaction raised substantive issues of interpretation which require timely review of the law, and change, as well as judicial intervention.

**PSC Tax Law Enforcement and Law Change:**

One very important development associated with the introduction of the PSC terms to the PPTA regime, is the failure to implement specific provisions of the PSC Act,[[305]](#footnote-304) especially with respect to treatment of pricing, costs, production quotas, credits, and allowances. These have all added to the resulting confusion in the PSC tax regime. Amending the traditional PPTA regime with respect to the applicable royalty rates for PSCs, section 5 of the PSC Act states that the payment of royalties in respect of the Deep Offshore PSC shall be graduated in accordance with water depth. The royalty rates of 0% for areas more than 1000 metres depth, to 12% in areas between 200 to 500 metres water depth, whilst royalty rates payable in the Inland Basin shall be 10%.[[306]](#footnote-305) Major oil finds were discovered in water depths of above 1,000 metres in all the five (5) deep water oilfields that came on stream between 2005 and 2010, and these attracted zero royalty.[[307]](#footnote-306)

Section 16 (1) of the PSC Act specifically provided that the Act shall be subject to review to ensure that if the price of crude oil at any time exceeds $ 20 per barrel, real terms, the share of the Government of the Federation in the additional revenue shall be adjusted under the PSCs to such extent that the PSC’s shall be economically beneficial to the Government of the Federation.[[308]](#footnote-307)

Furthermore, section 16 (2) states that, notwithstanding the provisions of subsection (1) of this section, the provisions of the Act shall be liable to review after a period of fifteen (15) years from the date of commencement and every five (5) years thereafter. Nevertheless, the Corporation and the FG failed to implement this provision of the PSC Act on price and law review, thus leading to significant revenue losses for the government.

Subsequently, the Attorney Generals of Rivers, Bayelsa & Akwa Ibom States (plaintiffs) approached the SC for a ruling on the revenue implications of s.16 of the PSC Act.*[[309]](#footnote-308)* Two declaratory reliefs and a consequential order were sought by the plaintiff States. They relied on their right to share monies accruing to the Federation Account (FA) pursuant to section 162 (1),

(2) and (10) (a-c) of the 1999 Constitution of the Federal Republic of Nigeria. The States submitted that they had suffered economic loss because the FG failed to review the PSC Act[[310]](#footnote-309)*,* which would have increased the Government take for distribution to all tiers of Government, especially themselves. They sought declarations that:

"(a) ...there is a statutory obligation imposed on the Defendant (FG), pursuant to section 16 (1) PSC Act to adjust the share of the Government of the Federation in the additional revenue accruing under the PSC’s if the price of crude oil at any time exceeds twenty dollars ($20) per barrel in real terms to such extent that the PSC shall be economically beneficial to the government of the Federation; and a fortiori the component Federating States of the Federal Republic of Nigeria (FRN) especially 1st, 2nd and 3rd Plaintiffs, and

(b) ...the failure of the Defendant, to accordingly adjust the share of the Government of the Federation in the additional revenue in the PSC’s (variously approved by the Defendant) following the increase of price of crude oil in excess of twenty dollars ($20) per barrel in real terms, constitute a breach of s 16 (1) PSC Act, and thereby affected the total revenue accruing to the Federation and consequently; (i) the total statutory allocation accruing to the Plaintiffs by virtue of the provisions of section 162 of the 1999 Constitution (as amended)."

The consequential order sought was:

"..to compel the Defendant to adjust the share of the Government of the Federation in the additional revenue under all the PSC’s in Nigeria's Oil Industry within the Inland Basin and Deep Offshore areas as approved by the Defendant from the respective times the price of crude oil exceeded twenty dollars ($20) per barrel in real terms and to calculate in arrears with effect from August 2003, and recover and pay immediately, all outstanding statutory allocations due and payable to the plaintiff arising from the adjustments."

Following the parties' entry into terms of settlement, which was thereafter filed and delivered as a consent judgment, the SC did not have the opportunity to consider arguments in the matter. The failure by the agencies responsible for enforcing tax law provisions on price review and periodic tax law review resulted, in this instance, in significant financial costs or loss of revenue to the Government. The SC in the consent judgement directed the Attorney General of the Federation to work jointly with the three (3) State Governments in the suit to recover all lost revenue accruing to the Federation. This declaratory relief raised concerns on taxpayer rights and protection.[[311]](#footnote-310) In addition to the fiscal policy and tax law interpretation and enforcement issues arising from the consent judgement, there is also a Constitutional law issue. The consent judgment, it has been argued, represents a tacit admission by the FG of its failure to diligently implement a PSC Act tax legislative provision impacting on the revenue accruing to the FA, which funds are distributable to the three tiers of government, i.e., FG, States and Local Governments. It also underscores the need to ensure regular review and reform of legislative terms to ensure the responsiveness of the tax system.

Secondly, it is interesting that other States Attorneys-General were not joined in the matter, as the three Plaintiff States had no greater interest or *locus standi* than other States, especially the other oil producing States that were also entitled to 13% derivation[[312]](#footnote-311). Nevertheless, the pertinent issue here has to do with the failure to enforce clearly stated fiscal and tax legislative objectives and the need for continuous review and amendment of legislative terms to achieve clarity and enhance consistent and common understanding and interpretation of legislative terms and provisions. The absence of clear enforcement processes, and the lack of will on the part of relevant MDAs to enforce or review the relevant provisions added to the uncertainty in the upstream petroleum tax system, despite the existence of enforcement provisions under the PPTA.

Thirdly, the challenge for tax administration is whether the SC decision provides sufficient legal basis or a recovery mechanism to claw back lost revenues. Also, assuming a retrospective recovery is legally feasible, what the implication is for the six-year statute of limitation period,[[313]](#footnote-312) as well as the stability of the PSC regime.[[314]](#footnote-313) The typical 1993 PSC has stabilisation provisions to the following effect:

*"*In the event that any enactment of or change in the laws or regulations of Nigeria or any rules, procedures, guidelines, instructions, directives, or policies, pertaining to the Contract introduced by any Government department or Government parastatals or agencies occurs subsequent to the Effective Date of this Contract which materially and adversely affects the rights and obligations or the economic benefits of the Contractor, the Parties shall use their best efforts to agree to such modifications to this Contract as will compensate for the effect of such changes*.* If the Parties fail to agree on such modifications within a period of ninety (90) days following the date on which the change in question took effect, the matter shall thereafter be referred at the option of either Party to arbitration under Article 21 hereof. Following arbitrator's determination, this Contract shall be deemed modified forthwith in accordance with that determination."

Furthermore, in addition to creating uncertainty in the PSC arrangement, which the stabilization provisions sought to avoid, the prospects of "retrospective recovery"[[315]](#footnote-314) is against the generally accepted principle that vested rights and tax obligations, much like criminal liability, cannot be retrospectively altered.[[316]](#footnote-315) This has international tax treaty implication if the IOCs are to resort to Bilateral Investment Treaties (BIT) to enforce or preserve their rights under the PSC Act.

The Nigeria Extractive Industries Transparency Initiative (NEITI), in its policy brief, entitled ‘The Steep Cost of Inaction’[[317]](#footnote-316), raised questions on the FG's non-review of the 1993 PSCs, which the 2019 Finance Act has attempted to resolve. The existing royalty regime under the PSC Act has by this amendment been replaced with a combined production and price-based royalty regime.[[318]](#footnote-317) Also, a new Section 16 (A) mandates the Minister of Petroleum Resources to cause the NNPC to call for a review of the PSCs every eight (8) years,[[319]](#footnote-318) and a fine of at least ₦500 million for non-compliance with any obligation imposed by the provisions of the Act, or imprisonment for a period not less than five (5) years, or both, upon conviction by a competent court of law.[[320]](#footnote-319) The 2019 FA therefore attempts to precisely define the obligations of all parties for fiscal and law review, and imposes clear penalties for a breach, as these make for more certainty of the tax system.

These developments underscore the need for fiscal and tax policy and law alignment to avoid ambiguities, and for sustained structured fiscal and tax law review to make the terms of the PSC clear, predictable and aligned with the PPTA[[321]](#footnote-320) provisions, as judicial intervention can only attempt to interpret and clarify stated terms and concepts.[[322]](#footnote-321) The interaction of the various fiscal regimes with the PPTA clearly added to the uncertainty in the upstream petroleum taxation system. The PSC Act’s amendment of the PPTA raised many critical questions especially with respect to the treatment of PSC concepts and terms, including whether the PSC terms and provisions qualify as commercial, tax or regulatory legislation.[[323]](#footnote-322)Some of the basic requirements to achieve tax precision and clarity as reviewed in the *Fairfax case* discussed below, are relevant for determining if the provisions of the PSC Act, strictly construed qualify as tax legislatives terms.

In the Australian case of *Fairfax v. Federal Commissioner of Taxation*[[324]](#footnote-323) the High Court of Australia considered the scope of the taxation power under section 51(ii) of the Constitution[[325]](#footnote-324), The case identified the key requirement of taxation, which is clarity in the tax obligation imposed by a tax law, and in this case under section 11 of the Income Tax Law. The *Fairfax case* further provides helpful insight on how precisely defined charging provisions facilitate enforcement and tax compliance, thereby enhancing certainty in the tax system*.*In this case, Fairfax had challenged the [income tax](https://en.wikipedia.org/wiki/Income_tax" \o "Income tax) and [social services](https://en.wikipedia.org/wiki/Social_services" \o "Social services) charges under section 11 of the *Income Tax and Social Services Contribution Assessment Act 1964[[326]](#footnote-325)*. Fairfax had argued that the law was with respect to superannuation funds, and not an exercise of the taxation power. Kitto J however held that,

“The Commonwealth law was in substance a law with respect to taxation. A tax does not cease to be valid because it regulates, discourages, or even definitely deters the activities taxed.”

The plaintiffs had submitted that if superannuation funds were fully undertaken under the law, and invested in government securities, then the Section 11 provision would result in no taxation revenue for the government. The Court however thought the issue of raising revenue was a secondary concern. The law was still concerned with taxation because it imposed a taxation obligation. The fact that the purpose was to deter superannuation funds, did not preclude it from being a matter with respect to taxation.

The *Fairfax case* also examined the attributes of a taxing statute, even where it seeks to regulate or preclude some subject matter or activities. The characterization of tax obligations and taxing statutes is relevant in our analysis of the PSC terms and concepts as well as the clarity required to impose tax obligations under the PPTA as amended by the PSC Act. The relevant PPTA provisions as amended by the PSC Act to admit the commercial and fiscal incentives within the PSC taxing concepts and obligations in many cases lacked the required definitiveness and clarity, and some of the key characteristics required of a tax statute as identified in *Fairfax v Federal Commissioner of Taxation* to create a tax obligation. Primarily. the express terms and words in the tax legislation must be clear, as they are generally read strictly and literally. In enforcing tax laws, it is the express terms of the law that will prevail. There can only be a derogation from this if such necessary implication can be founded on the express terms of the statute. Many of the PSC terms and concepts introduced to the PPTA fail this test of precise definition, clarity, and predictability.

A second characteristic of tax legislation is the direct taxing effect of the tax legislation. In this regard, the question to ask is whether the statute imposes less or more than an obligation to pay tax. The *Fairfax case* highlights the indirect economic consequence of a tax legislation. The fact that the statute regulates or prescribes a commercial activity, and, as in the PSC case, the contractual and fiscal incentives may not directly obviate a tax obligation created by the statute. In effect, the nature of a tax law cannot be determined by looking at its economic or regulatory consequences.

Also, in line with cannons of the interpretation of statutes, the motive that prompted the legislature to enact the law should generally be disregarded. A close examination of some of the concepts and the inadequately defined PSC terms which impact the tax imposing PPTA terms and obligation, suggest that the legislative draftsmen may not have carried out a principled and rule-based analysis of PSC terms and provisions, alongside the amendment of the PPTA. Moreover, the label of tax does not ipso facto entitle a law to be characterized as being a tax law if its true character is something else. The PSC Act’s attempt at consolidating economic and commercial incentives awarded to encourage exploration and production of O&G in the deep and shallow waters of Nigeria, in a period of low oil prices and rising cost of operations. However, it failed to achieve the level of clarity and precision required in tax legislation, especially in some of the parameters, concepts, and terms of the PSC, such as, financing costs and interest deductibility as well as such concepts or terms as ‘Contract Area’, ‘Cost oil’, ‘Profit oil’, and Tax oil’.

In the *Total Exploration & Production Nig. Ltd. & Ors. V. Federal Inland Revenue Service case*,[[327]](#footnote-326) the uncertainty arising from the PSC term ‘Contract Area’ came up for review. The Notice of Assessment pertaining to the Contract Area of the PSC failed to list each of the parties to the PSC. Relying on Section 39(1) of the PPTA[[328]](#footnote-327) the Appellants argued that this failure did not nullify the assessment. The TAT ruled that the word used in Section 37(1) of the PPTA[[329]](#footnote-328) is *“shall*,” making it mandatory for the parties to be listed. The TAT however declined to decide on this issue but affirmed instead that it would be “more expedient to serve the notice of assessment on each party to leave this issue out of contention”.

Section 15 of the PSC is another significant provision with respect to establishing certainty in the interaction of the PSC Act with the PPTA[[330]](#footnote-329).The section provides for the adaptation and invalidation of other legislative enactments to the extent of their inconsistency with the PSC Act. This in effect removed the flexibility associated with PSCs and, it has been argued, confirmed the PSC Act as a stabilization enactment,[[331]](#footnote-330) superseding all other legislative enactments including the PA and the PPTA. Section 1 of the PSC Act states that “notwithstanding anything to the contrary contained in any other enactment or law, the provisions of this Act shall apply to all production sharing contracts as defined in section 17 of this Act”[[332]](#footnote-331). With the PSC Act effectively amending the PPTA and other taxing legislation affecting upstream petroleum taxation as examined in the next section, it may be observed that the stabilization provision of the PSC Act did not achieve the desired level of clarity and certainty for upstream petroleum taxation. Moreover, the non-enforcement and implementation of the PSC Act review provisions as they relate to royalty and oil prices change as well as the periodic review and amendment of the PSC Act [[333]](#footnote-332) were clear indicators of the gaps and non-alignment of fiscal objectives of the PPTA and the PSC regime.

**4.3 THE INTERACTION OF THE PPTA AS AMENDED BY THE PSC ACT WITH THE OTHER TAX STATUTES**

In this section, we examine the interaction of the fiscal regimes[[334]](#footnote-333) and the impact of the various Federal and State taxing statutes with the principal tax Acts, i.e., the PPTA, PSC and CITA. This interaction is due in part to the exercise by the federating units of their perceived legislative powers under the 1999 Constitution. This has resulted in the incidence of multiple taxes, levies and fees charged by the federating unit and local councils on upstream petroleum operations and the petroleum tax system. Also, the multi-tier tax administrative structure in the federation has implications for upstream petroleum taxation. The multiple jurisdictions and the court systems have resulted in several conflicting tax rulings emanating sometimes from the TAT and the FHC. As discussed in chapter 3, the over-centralization of fiscal powers in the FG and the overlap in the Constitutional fiscal and taxing powers of the Federating units, i.e., between the FG and the States and local councils in Nigeria, has triggered a competition for revenue capture through the unclear and sometimes overlapping exercise of taxing powers. Consequently, this has affected the level of clarity in tax legislative provisions and the exercise of taxing powers affecting upstream petroleum activities.

The line of cases examined below highlights some of these overlaps arising from the exercise of the tax legislative powers by the federating units in the Nigeria federal system and how this affects upstream petroleum taxation. In the *Schlumberger Nigeria Limited v. Obio-Akpor Local Government Council case,* [[335]](#footnote-334) the High Court declared all forms of taxes imposed by the Obio-Akpor Local Government Council in Rivers State, affecting petroleum services, as null and void. The Court held that the Rivers State Taxes, Levies By Law of 2004; which vested in the Council the power to impose charges, levies and fees, was inconsistent with the Taxes and Levies (Approved List for Collection ) Act of 2004.[[336]](#footnote-335) The Court stated further that “any provision of a Local Government Council providing for taxes and levies outside those provided under Part III of the Schedule to the Taxes and Levies (Approved List for Collection) Act 2004 is ultra vires, irregular, unconstitutional, null and void and of no effect.”

In *Shell Petroleum Development Co Nigeria Ltd v Bayelsa State Board of Internal Revenue*[[337]](#footnote-336), SPDC, the plaintiff, challenged the legality of the Infrastructure Maintenance Levy Law 2003 of Bayelsa State. The court held that while the State had the power to legislate on and impose taxes, the State had no capacity or authority to impose any tax outside Part II of the Taxes and Levies (Approved List for Collection) Act.[[338]](#footnote-337) The court further held that the laws enacted are not void but voidable, as they have not passed through the Joint Tax Board (JTB).[[339]](#footnote-338)

In yet another case, *Mobil Producing Nigeria Unlimited v Tai Local Government of Rivers State of Nigeria***,**[[340]](#footnote-339) the court held that the local government had limited power over areas where they can levy and impose taxes under the 1999 Federal Constitution of Nigeria. Apparently, in seeking to internally generate additional revenues in the local council areas, the local government were over-reaching or extending their fiscal legislative powers beyond the items in the residual list, as stated in the Constitution. This attempt on the part of the State governments and local councils across the federation, especially in the Niger Delta areas where petroleum operations are carried out, typically raised issues on the constitutionality of these taxes, as well as creating frictions and the incidence of multiple taxes and levies in upstream petroleum taxation.

With respect to transaction taxes and VAT, some of the States have, in exercising their perceived legislative powers under the Constitution, also enacted either Sales Tax or VAT legislations to facilitate the assessment and collection of revenues, through more transaction taxes, charges and levies to generate tax revenues for development. This has also resulted in the incidence of double and multiple taxation and increased costs of operations for petroleum companies. However, the enactments have been challenged for over-reaching or seeking to tax the same base that a federal enactment such as the VATA has taxed. A case in point is the appeal against a FHC decision, involving the *Attorney General (AG) of Lagos State v. Eko Hotels Ltd & Anor*.[[341]](#footnote-340) The Court of Appeal (CA) held among other things that the FG through the FIRS was entitled to the money collected by EKO Hotels Ltd as consumption tax on sales made to its customers.[[342]](#footnote-341)The CA held that the Sales Tax law of Lagos State was no longer operational as it was applicable on the same matters as the Value Added Tax Act (VATA), a Federal enactment. The Court held further that the collection of VAT and Sales Tax on the same goods and services would amount to double taxation and that the VAT Act being a federal statute was superior, and therefore takes precedence over the Lagos State Sales Tax laws.

In two more recent cases on VAT,[[343]](#footnote-342) the FHC has essentially held that the Constitutional powers and competence of the FG is limited to the taxation of incomes, profits, and capital gains, and does not include VAT or any other species of Sales Tax. The FHC declared that the powers of the FG to impose taxes is limited to the items listed in item 59[[344]](#footnote-343) of Part 1 of the Second Schedule of the 1999 Constitution (as amended), and does not include power to impose VAT, TET, Technology Levy among others. It further held that, insofar as the VAT Act purports to impose, levy, or authorise the demand and collection of VAT, by any other agency of the FG, it is unconstitutional, illegal, null and void to the extent of its inconsistency with the provisions of the 1999 Constitution as amended.[[345]](#footnote-344) It declared that the powers of the FG to delegate the collection of taxes is limited by the provisions of items 7 & 8 of Part 11[[346]](#footnote-345) (Concurrent Legislative List) of the Second Schedule of the 1999 Constitution.

The decisions in the two VAT cases are significant, as they attempt to delimit and delineate the fiscal scope and taxing powers of the FG, and by extension that of the federating States under the 1999 Constitution. Prior to this, the FG had arrogated to itself the role of legislating and collecting VAT on behalf of the federating States, on items outside the scope of gains, incomes, profits, and excise duty. This has been contentious to say the least and particularly affects VAT transactions in the petroleum industry, and upstream petroleum taxation, given that significant levels of the transactions and services are generated or supplied to companies engaged in petroleum operations. This reinforces the need for a Constitutional amendment to give more clarity to the taxing powers of the States and Local Councils, vis-à-vis the FG. In the meantime, since the decision of the FHC on VAT is being appealed, it will hopefully clarify the issue of the taxing powers of all the federating units in the Federation. This is indeed necessary and will bring more clarity and certainty to the entire tax system.

Another source of uncertainty for upstream petroleum taxation which affects international as well as domestic taxation is the taxation of services provided by non-resident companies (NRC). Section 13(2) of CITA, on the taxation of companies not registered in Nigeria, states that the profits of a non-Nigerian company from any trade or business shall be deemed to be derived from Nigeria in the following circumstances:

1. if that company has a fixed base of business in Nigeria to the extent that the profits are attributable to the fixed base,
2. if it does not have such a fixed base in Nigeria, but habitually operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made…,
3. if the trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract; and
4. where the trade or business or activities is between the company and another person controlled by it or which has controlling interest in it….’

The lack of clarity in terms and concepts such as fixed base (FB) under domestic tax law, and the precise extent of turnkey contracts, agency arrangements and the characterization of activities subject to domestic taxation in section 13(2) of CITA have been a source of concern for upstream petroleum operators. A fixed base (FB) under domestic tax law is not clearly defined, and its implications for permanent establishment (PE) for international and Double Tax Treaty (DTT) purposes can be confusing. This has significance for both the principle of economic substance and significant economic presence and the OECD [Two-Pillar Solution](https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf" \t "_blank) to the tax challenges arising from the digitalization of the economy.[[347]](#footnote-346)

Section 13 (2) of CITA was amended by section 4 of the Finance Act, 2019, to broaden the revenue base, scope and ambit of what activities, though performed offshore or digital in nature, may be deemed to be derived from and taxable in Nigeria.[[348]](#footnote-347) In two cases preceding the amendment, the implications of s.13(2) of CITA, particularly with respect to creating a fixed base (FB) for domestic taxation and the attribution of revenue from activities performed onsite were examined.[[349]](#footnote-348) The issues for determination were three-fold;

(a) if a turnkey/single consortium contract covering both onshore and offshore works is to be performed by an NRC, would the profits accruable from, or attributable to the works/services performed outside Nigeria be subject to tax in the domestic jurisdiction, and

(b) the effect of FIRS opinions/circulars on the subject given the inconsistency in the interpretation by FIRS; and lastly,

(c) whether a DTT would apply if the services or works are executed in a DTT country?

In the *Saipem Contracting Nigeria Ltd vs FIRS[[350]](#footnote-349) case*, the plaintiffs, Saipem Nigeria, Saipem Portugal and Saipem Parent Company (France) had entered a consortium/turnkey contract for the construction, installation and fabrication that were to be performed in Portugal and Nigeria, respectively. The importer of the finished products on record was Shell. Section 11, article 36.8 of the Contract stated that, both offshore and onshore elements of the Contract were taxable in Nigeria and that Saipem was liable as the taxpayer. Saipem had obtained a tax opinion from the FIRS exempting the services carried out offshore from withholding taxes (WHT). The Court however held as follows:

1. since all the necessaries leading to the single consortium/turnkey contract, including execution and payment, were taking place in Nigeria, the Saipem companies were deriving profit in Nigeria, and
2. that the part of the income attributable to Nigeria is subject to CITA, under sections 9 (1)(a), 11(2), 13(2)(c), 26(b) and 30(b)(iii) of CITA. The Court was of the view that in line with the decision in the earlier *Offshore International v FBIR case[[351]](#footnote-350)*, the entire contract was a single contract,
3. that Shell Petroleum Nigeria, the resident company, was engaged in upstream petroleum operations and had a legal obligation to withhold tax on payments due to Saipem,
4. that the FIRS was entitled to withdraw their earlier tax opinion since payment of tax is an obligation stated under the CITA, and that the CITA provision was clear on the subject, and could not be privately altered between Saipem and FIRS, and,
5. that since it was not the global income of Saipem that was being taxed, but profits from the Nigerian contract, the exemption under the DTT does not apply.
6. The Court however held that VAT would not apply.

Justice Saidu stated thus,

“Notwithstanding whatever representation [that] the 1st Defendant [FIRS] might have made to the Plaintiffs [Saipem], as to their tax regime or status, it is the law that guides payment of tax that must prevail...Therefore, it is not the issue of resiling of earlier statement that is important now. What is important are the various provisions of law guiding payment of tax in this country? I hereby hold that nothing stopped the [FIRS] from resiling their earlier statement to the Plaintiffs, where such statement does not conform to the law. The issue of payment of Tax is completely that of law”.

The ruling in the Saipem case is in line with an earlier decision in *Global International Drilling v FIRS[[352]](#footnote-351),* where the Court also held that the FIRS is not bound by its own opinions and circulars since the FIRS has the freedom to change its position. In other words, the FIRS has the authority under the extant laws to interpret the revenue laws and give general practice guidance to taxpayers. The decision of the Court ignores or fails to address the issue of multiple understanding of an unclear statute, or where the fact patterns of a case present a position not specifically or expressly addressed or anticipated by the statute? The Court took a rather simplistic approach to the matter and glossed over the significant and broader issue bordering on the precision of statutory provisions, thus necessitating a party’s reliance on the rulings of the tax authority. The matter in question here is whether the FIRS guidance can be relied on, where the law fails to adequately address the facts in question, or is open to multiple interpretation? The matter, therefore, goes beyond the authority of the FIRS to resile its position.

The challenge for the Government, and policy makers, tax legislation drafting, and tax administration and dispute resolution is how to achieve clarity in policy objectives and alignment with tax legislative purpose, as well as the consistent and common understanding of tax legislation. The lack of clarity of tax legislative provisions creates the possibility of having two or more perfectly reasonable and distinct interpretations of a statutory taxing provision. This should always be avoided, as this only adds to the uncertainty in the tax system. Also, the inconsistent interpretation and application of tax legislative provisions by the revenue authority, particularly with respect to the interaction of the upstream fiscal and tax regime with the midstream and downstream sectors, as well as transactions taxes, all further contribute to the distortions and gaps in the upstream tax system.

**4.4 THE JUDICIAL PROCESS AND THE CHALLENGE OF ACHIEVING CERTAINTY IN UPSTREAM PETROLEUM TAXATION.**

Certainty in the tax system requires that taxpayers and the tax administration act according to law, and the tax tribunals and courts provide independent reviews of tax administration[[353]](#footnote-352) and taxpayer actions in the interpretation of statutory taxing provisions.[[354]](#footnote-353) The tax appeal process in Nigeria recognises the need to adjudicate tax disputes within the existing judicial system, as there are no special tax courts in Nigeria.[[355]](#footnote-354) The age of the upstream petroleum tax legislation[[356]](#footnote-355) and the absence of continued and sustained reform and simplification of the fiscal and tax system for a complex industry as the petroleum industry are all important factors affecting the nature and substance of petroleum taxation, administration and compliance. Also, the non-existence of tax courts, as well as the non-specialization of judicial officers in tax or revenue matters impact upstream petroleum taxation and the slow evolution of clear upstream petroleum tax jurisprudence.

A taxpayer may object to an assessment and can also appeal to the TAT against a tax assessment, while the taxpayer’s objection against the assessment is yet to be resolved by FIRS[[357]](#footnote-356). The common approach of judicial officers has been to apply the traditional approaches to statutory interpretation[[358]](#footnote-357) which wrestles with words and their meaning, even in tax matters.

The intervention of the TAT in tax matters is the first administrative, quasi-judicial mechanism for resolving tax disputes where the taxpayer disputes the assessment of the tax authority. The TAT and the courts are required to apply the tax provisions by giving a strict literal interpretation to the words and terms used in the taxing statutes. The clear objective is to strike the right balance between the clarity of taxing provisions, avoidance of gaps and conflicting terms and confusing objectives of policy and statutes, the facilitation of compliance, as well as curbing aggressive tax planning. It also enhances the capacity to make an accurate assessment of the tax, as well as the compliance costs associated with an investment or the continuation of an investment over the life cycle of the investment by achieving voluntary compliance by taxpayers, in a way that both respects the letter and the spirit of the law, and prevents the intentional use of the tax law or a combination of tax laws and /or tax treaties in a way that leads to taxation that is not in line with the spirit and purpose of the relevant tax laws.

In the *FIRS v Total E&P Nigeria Limited (Total) case,[[359]](#footnote-358)*Total, had in 2010 and 2011, sold its interest in OMLs 4, 38 & 41 and 2 & 42, respectively. In computing the balancing charges applicable to the disposal, Total split the sales proceeds between tangible and intangible assets and computed balancing charge on only the tangible assets. The tangible assets included wells, in-field pipelines, flow lines, manifolds, and flow stations while intangible assets comprised hydrocarbon accumulation data, right to win, work and exploit petroleum in the OML area. Several issues came up for determination. One of the issues was with respect tothe disposal by Total E&P of its interest in some oil mining leases (OML’s). Total split the sales proceeds of the interest in the relevant OML’s between tangible and intangible assets and computed the balancing charge on only the tangible assets. The FIRS challenged the split and submitted that all the assets were qualifying expenditure in line with paragraph 1[[360]](#footnote-359) of the Second Schedule of the PPTA. The FIRS included the petroleum investment allowance (PIA) on the assets in determining the capital allowance (CA) claimed and computed additional Tertiary Education Tax (TET) on the resulting balancing charge. The PPTA, however, did not specifically address the subject matter or anticipate the split in sale proceeds for balancing charge purposes, whilst the second schedule to the PPTA failed to provide adequately and clearly for the treatment of the sales proceeds of interests in OML’s.

On a second issue of interest on loans obtained by Total from Total Finance, a related party, the FIRS disallowed the interest deduction on the basis that s13(2)(c) of PPTA precluded interest on related party loans as an allowable expense for PPT purposes. On yet another issue of dividends distributed, Total had declared dividends out of its O&G profits without applying withholding tax on the dividends distributed from the gas profits. The FIRS maintained that the dividend declared out of the respondent's gas profits was liable to withholding tax (WHT), since gas profits were subject to tax under the CITA, and not PPTA, which exempts dividends distributed from WHT.[[361]](#footnote-360)

Aggrieved with the FIRS' position on these issues arising from its upstream petroleum operations, which should normally be subject to tax under the PPTA, Total approached the TAT. The TAT held as follows:

1. Total was not required to include the intangible interest in the OML assets purchased and disposed of in the same accounting period in the calculation of the balancing charge as no CA had been validly claimed in respect of the assets in line with the Second Schedule to the PPTA.
2. PIA and Annual Allowance (AA) are separate and distinct allowances. Therefore, PIA should not be added to AA for computing the balancing charge under Paragraph 9 of the Second Schedule to the PPTA.
3. Assessable profit on which TET[[362]](#footnote-361) is charged is not inclusive of the balancing charge. Thus, Total was not liable to pay any additional TET.
4. Interest paid on intercompany loans qualifies as a deductible expense under s 10(1) (g) of the PPTA, provided that the interest rate conforms to the arm's length principle. The interest paid by Total Nigeria to Total Finance Ltd conformed with the arm's length principle and therefore qualified as a tax-deductible expense for PPT purpose.
5. Total was liable to pay WHT on the dividend attributable to profits from its gas income as the company failed to separate the dividend attributable to its gas income from oil income. Therefore, Total should rely on FIRS' diligence and fairness mechanism to arrive at the percentage of the dividend attributable to its gas income and compute the WHT payable thereon.

On appeal by FIRS to the FHC, the TAT judgment with respect to the balancing charge and PIA – see items 1 & 2 of the TAT decision above were overturned. The FHC held that PIA should be included in the computation of the balancing charge on disposal of assets used for petroleum operations. More specifically, the FHC held that PIA granted by Paragraph 5 of the Second Schedule to the PPTA[[363]](#footnote-362) states that,

(1) “For the purposes of this Act, and subject to the provisions of this Schedule, where a company has incurred any qualifying capital expenditure (QCE) wholly, exclusively and necessarily for the purposes of petroleum operations carried out by it, there shall be due to that company, for the accounting period in which that asset was first used or for the purposes of such operations, an allowance (in this Schedule called PIA) at the appropriate rate per cent, set forth in Table I to this Schedule, of such expenditure”.

ss.2, states further that; “for the purpose of this Act, the PIA shall be added to the AA computed under paragraph 6 of this Schedule and shall be subject to the same rules under this Act”.

The FHC held that the PIA should be added to the AA claimed on the assets, for the purpose of computing balancing charge for disposed assets, based on paragraph 5(2) of the Second Schedule to the PPTA, which provides that PIA shall be added to the AA computed under paragraph 6 of this Schedule and shall be subject to the same rules under the Act. The real issue was whether the TAT was right in disallowing the Appellant’s addition of PIA and annual allowance of the Respondent to compute the balancing charge, considering Paragraph 5(2) of the Second Schedule to the PPTA, since a balancing charge is not a profit of a company and therefore also not subject to TET[[364]](#footnote-363).

In arriving at the above decision, the FHC noted that:

• The word *“shall*” in the provision is a mandatory command to do exactly as the law says and entertains no discretion. Therefore, PIA is to be added to the AA in computing the balancing charge.

• When there is no ambiguity, the law must be construed literally, and the words given their plain meanings.

With respect to the split of the base for calculating the interest in the OML disposed of by Total, the FIRS adopted a disjunctive rather than a conjunctive interpretation of the provisions of the Second Schedule on QCE in disallowing the split between tangible and intangible assets. The FHC ruling on the matter seemed to agree with the FIRS basis for computing the balancing charge. However, this position ignored the provisions of paras 8 and 9 of the Second Schedule of PPTA, which provide for two variables to be used in determining the balancing allowance or charge on disposal, which is “the residue of the QCE” and “the sales value of the QCE” at the date of disposal. Specifically, Paragraph 10 of the Second Schedule defines the residue of a QCE at any date as “the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any AA due to the owner, in respect of that asset, before that date.” The failure to refer to the specific distinction clearly meant that the express specific provisions of paras 8 & 9 of the Second Schedule were overridden by the general provision on QCE in para 5 of the Second Schedule. The FIRS approach seemed to be revenue driven, rather than the literal interpretation of the said provisions of the Second Schedule of the PPTA. It also exposed the fact that where rights and obligations are not clearly and adequately provided for in tax legislation, the failure of the judicial body to apply either the literal meaning of words or the mischief rule of statutory interpretation to cure the defect or mischief only fuels the uncertainty and lack of predictability required from legislation.

The consequence was the inclusion of PIA in the computation of balancing charge, contrary to the objective of the CA provision. The judgment also casts doubt on the fact that PIA is an uplift[[365]](#footnote-364) on CA, rather than part of QCE for CA purposes. In effect, the judgment failed to consider whether the specific provision of Paragraph 10 of the Second Schedule defining the residue of QCE should take precedence over the general provision of Paragraph 5(2) of the same Schedule, or more appropriately should have been read along with the general provision which references the addition of PIA to AA, subjecting both to the same treatment under the Act. It would also be correct to state that the FHC ruling failed to consider the principle of ‘expressio unius est exclusio alterius’ (the expression of one thing is the exclusion of the other), given that Paragraph 5(2) only mentions AA, whilst para 8 & 9 addressed the specific requirements. Simply stated, clarity of expression in taxing statutes, and the use of simple language, is key to competent and structured legislative drafting and interpretation.

The other issue on appeal is related to the basis for calculating TET. The FHC held that the balancing charge should not be included in determining the assessable profit of a company for TET purposes. It relied on the express provision of the TETA.[[366]](#footnote-365) The FHC held that “since TET is assessed on and calculated on assessable profit of the company which is the adjusted profit to which balancing charge is not normally included, Total Nigeria is not liable to pay TET on the balancing charge”. In arriving at this decision, the FHC reaffirmed the decision of the TAT that Total had paid TET on its assessable profit as provided by Section 1, ss. (1), (2) and (3) of the TETA. Specifically, Section 1(3) of the TETA provides that,

“The assessable profit of a company shall be ascertained in the manner specified in the CITA or the PPTA as the case may be”.

This underscores the need for specific provisions to deal with specific facts or subject matters. Considering the specific and express provision on the subject, the FHC readily agreed with the TAT’s view that the balancing charge is not included in the assessable profits of a company and therefore not liable to TET. Para 9 of the Second Schedule requires that the balancing charge should be treated as income of a company in an accounting period for the purposes of Section 9(1)(a) of the PPTA. i.e., as a part of the proceeds of sale of all chargeable oil sold in that period.[[367]](#footnote-366)

In summary, the *Total case* dealt with issues touching on clarity of policy objectives, words and express rules for law making and interpretation. The case highlights the importance and role of competent legislative drafting and competent tribunals in interpreting tax provisions. For instance, the Court’s position on the basis for computing the PIA, by reading paragraphs 5, 8, 9 & 10 of the Second Schedule disjunctively, rather than conjunctively, ignored the specific provisions of paragraphs 9 & 10 of the Second Schedule.

On the important issue of jurisdiction of Tribunals and Courts in tax revenue matters, in the *Shell (Nig.) Exploration and**Production Ltd & 3 others v Federal Inland Revenue Service case,*[[368]](#footnote-367) the Court gave a rather confusing signal with respect to Section 251(1)[[369]](#footnote-368) of the 1999 Constitution. The ruling states as follows:

“The above provision is a clear statement, that when it comes to the revenue of the Government of Nigeria or its organ and on matters pertaining to taxation of companies and other bodies carrying on business in Nigeria, it is the Federal High Court that has exclusive jurisdiction to adjudicate upon same. There is no dispute about it. Therefore, the claims filed before the tribunal, being substantially tax disputes, the tribunal would not have jurisdiction to pronounce upon them, as they are not arbitrable”[[370]](#footnote-369)

The rationale of the Court in arriving at its decision that the FHC has exclusive jurisdiction to resolve tax disputes which are therefore not arbitrable in Nigeria is questionable. The Court’s reliance on section 251(1) of the 1999 Constitution,[[371]](#footnote-370) was flawed since section 251 of the Constitution states as follows:

“The FHC shall have and exercise jurisdiction to the exclusion of any other Court to determine matters relating to the revenue of the Federal Government of Nigeria, and taxation matters.”

Construed strictly and literally, section 251 only excludes “Courts” (i.e., the various State High Courts, which exercise general civil jurisdiction, and the National Industrial Courts, which exercise jurisdiction in labour and employment claims). It does not expressly or specifically exclude “arbitration tribunals” which have always been regarded as separate dispute resolution mechanisms and have never been regarded or classified as Courts under Nigerian legal jurisprudence. Furthermore, if the Court’s argument on the “exclusive jurisdiction” of the FHC is strictly applied, it is difficult to comprehend the basis of the Court’s acceptance that the TAT (an administrative tax complaints tribunal created by the FIRSA) somehow shares in the “exclusive jurisdiction” of the FHC to hear and determine tax disputes in Nigeria, when appeals from the TAT go to the FHC. This further underscores the need for the decisions of the Courts to be clear, precise, predictable, and consistent with the provisions of statute. It also emphasizes the importance of having competent revenue and tax-knowledgeable judges and special revenue or tax courts to handle tax disputes, given the high degree of certainty required in tax matters that pertain to the complex upstream oil and gas or energy sector.

**CONCLUSION:**

As discussed in this chapter, the age of PPTA, the gaps in the legislation and the various piecemeal amendments to the different legislation affecting upstream petroleum operations, as well as the interaction of fiscal regimes and laws affecting upstream petroleum taxation, have created overlaps and several ambiguities in the treatment of key aspects of, and provisions of the upstream PPTA as amended by the PSC Act and other related Taxing Acts. The interaction of this special PPT regime with the other fiscal regimes and taxing statutes has in many instances resulted in multiple or dual interpretations of provisions and terms and words, as the boundaries are not always well defined or certain. Also, ill-defined words, concepts, and terms present their challenges, whilst lack of clarity in fiscal and tax objectives all contribute to creating uncertainty in the PPTA as amended by the PSC Act. The failure of articulating and designing the appropriate and responsive fiscal and tax policy to address the needs and challenges of Nigerian petroleum tax system in general and upstream petroleum taxation laws and regulations in particular, has informed the need for the comprehensive review of the petroleum tax system and regulations. The Petroleum Industry Act enacted in August 2021 is examined in Chapter 9 of this thesis. It will assess how effectively the areas and gaps contributing to the uncertainty in the upstream petroleum taxation system have been addressed.

**CHAPTER 5**

**POLICY AND TAX LAW MAKING IN THE NIGERIAN UPSTREAM PETROLEUM**

**INDUSTRY**

**5.0 INTRODUCTION**

This chapter examines the evolution and development of fiscal and tax policy, in the Nigeria upstream petroleum taxation system, and how these have impacted the form, substance, clarity, responsiveness, competitiveness, and level of tax legislation certainty.

Natural resource projects are subject to considerable uncertainty[[372]](#footnote-371) at all stages, from exploration through development to production and abandonment, as may be true in many other sectors, such as the chemical industry, requiring intensive research and development, high technology and significant finance or capital injection. The complexity of the natural resource industry, the inherent uncertainties and the longevity of the production period and the cost of abandonment, and its importance to many countries and the unusual ways it is taxed, all exacerbate the challenges, thus requiring a proactive and responsive fiscal and legislative design, and reform model or strategy, for the system to remain adequately precise, efficient, responsive, and competitive. The history and governance structures of the resource owning country, as well as the international nature of the petroleum industry and price fluctuation, are factors impacting the evolution and development of the petroleum industry and the level of certainty and predictability in the upstream petroleum taxation system.

The strategy and policy that governments therefore choose to develop their hydrocarbon resources, as in the case of the United Kingdom, discussed in chapter 7, and for Canada, in chapter 8, are significant in the development of the fiscal, legislative and tax regime, as well as the clarity, stability, and competitiveness of the petroleum tax and regulatory environment.

There are essentially three main options in terms of strategy that an oil producing country may choose in designing its fiscal regime and regulatory framework[[373]](#footnote-372). It may decide to ‘go-it alone or embark on the private ownership route. The third option, which has been the model adopted by Nigeria is the joint working arrangement of the international oil company and the national oil company (IOC–NOC) approach. This involves cooperation or partnership between the IOCs and the NOCs. Under the private ownership model, the practice is to apply concessionary regimes, as is the case in OECD countries and many developing countries. The IOC-NOC model involves a hybrid strategy and a wider selection of regimes, varying between concessionary, production sharing agreements and risk service agreements, which has been the case in Nigeria.

To sustain the petroleum industry’s competitiveness, the policy framework, and the petroleum fiscal regime (PFR) are expected to be flexible and suitable to the key stakeholders to attract investment into the host country. Clarity of objectives, certainty of terms and stability in the system are all prerequisites for sustained development.

The regulatory framework under the Petroleum Act and Regulation[[374]](#footnote-373) discussed in chapters 3, permitted a hybrid arrangement. Under the subsisting Constitutional fiscal federalism, which has defined how the tax system has developed, there is a three-tiered tax structure of the Federal, State and local governments, each of which have different tax and legislative powers. The FGN had exclusive control for petroleum policy and tax legislation making, as well as the control of petroleum operations. The control by the FGN did not, however, always produce the required structured and sustained regular fiscal, tax policy and legislative reviews for achieving policy and legislative clarity and certainty for the country, even though petroleum has been the dominant revenue earner for the country. As discussed in chapter 2 of the thesis, following the commercial discovery of petroleum in late 1956 in Oloibiri in present day Bayelsa State[[375]](#footnote-374), there have been several petroleum development arrangements. The petroleum arrangements began with the British colonial government granting a sole concession to a consortium of Shell-BP. Subsequently the concession arrangement was followed by participation arrangements, i.e., Joint Venture (JV), and thereafter the Contract (Risk Service and the Production Sharing Contracts), arrangements formally introduced by the PSC Act in 1990.

In the following sections of this chapter, we examine the evolution and development of the fiscal and tax policy objectives for the petroleum industry and how these have impacted the creation of a progressive and certain tax legislative and regulatory framework for the Nigerian petroleum industry.

**5.1 TAXATION AND POLICY EVOLUTION IN THE NIGERIAN PETROLEUM INDUSTRY**

The history of petroleum operations in Nigeria and the dependence of the Nigerian economy on oil rents has meant that there is immense pressure to raise optimal revenues from the sales of crude oil and the taxation of the petroleum industry. At different points in time, there have been over 40 different taxes and levies shared by all three levels of government in Nigeria [[376]](#footnote-375). The FGN tended to focus more on generating sufficient revenues for development and governance, at the expense of a structured and well defined and clearly stated national fiscal and tax objectives, which consider investor concerns and the need to attract investment and grow the industry. Although the FGN had exclusive responsibility for economy and the petroleum industry, the government’s economic policy goals, and the role of the national oil company, (NNPC), was not adequately defined or articulated, and lacked the national vision for evolving and growing the industry[[377]](#footnote-376), thus resulting in old and sometimes unclear and conflicting polices and legislation.

For extended periods in the Nigeria petroleum industry, fiscal policy development was slow and unclear and through the period of the oil boom of 1973/4, when the federally collected revenue rose from 26.3 per cent in 1970 to 81.8, 72.6 and 76.3 in 1979, 1989 and 1999, respectively[[378]](#footnote-377), traditional tax revenue never really assumed a strong role in the country’s management of fiscal policy. Instead of transforming or diversifying the existing revenue base, fiscal management merely transited from one primary product-based revenue to another, making the economy susceptible to fluctuations in the international oil market. The pre-occupation of the FG was increased government take from the oil industry through royalty and tax. The FG introduced incentives under the Memorandum of Understanding (MOU)[[379]](#footnote-378), with guaranteed profit margins and reserves addition, special pricing and payment agreements, gas incentives for associated gas production and the PSC arrangements in the early 1990’s to address the joint venture’s funding challenges, and to encourage the development of the deep offshore fields in the era of low oil prices.

The fiscal policy of the country as it affects the upstream petroleum industry,[[380]](#footnote-379)was reactive and designed to counter economic cycles, manage inflation, and support measured growth, rather than address current needs and future competitiveness[[381]](#footnote-380) of the petroleum industry. The challenge of designing a competitive, clear and a fiscally efficient legislative and regulatory framework for the Nigerian petroleum industry, included how to induce maximum effort from the oil companies while ensuring that the FG is adequately compensated. Some of the critical questions that had to be addressed included how to ensure clarity and certainty of the terms, and the effect of the fiscal regime on petroleum output? Also, whether the fiscal system encourages or discourages the development of small and marginal fields and whether it influences the pace of development, or favours early abandonment? The other important factor is whether it is sensitive to oil and gas price and cost variation? In other words, how flexible, neutral, or stable is the fiscal regime and what are the implications for taxation?[[382]](#footnote-381)

The approach to policy and tax law making for upstream petroleum tax system was characterized largely by ad hoc amendments of old laws and inconsistent policy interventions, project specific incentives, and the absence of structured law reform. These were distortionary in nature, with uncertain consequences and complicated by the existence of multiple taxes and levies at the federating state and local government levels. The grant of targeted or project specific investment incentives to create the enabling environment for capital inflow into the industry, such as the Associated Gas Framework Agreements (AGFA), and the memoranda of understanding with the IOC’s etc.[[383]](#footnote-382), proved inadequate to address the lack of direction and clarity in the regime in the face of a volatile market price[[384]](#footnote-383). Rather, it contributed to the lack of neutrality, stability, and competitiveness of the Nigeria petroleum fiscal and taxation environment, especially in the light of poor policy articulation, high operational costs, low prices, and poor legislative review, and law amendment. Studies have shown that downturns in oil prices have in some cases led to external and fiscal crisis and a pattern of fluctuating fiscal expenditures associated with oil price volatility resulting in significant economic and social costs for several oil producers.[[385]](#footnote-384)

Further to these ad-hoc incentives to encourage continuous flow of revenues to the FGN, the tax policy reviews of 1991 and 2003[[386]](#footnote-385)highlighted the need to increase tax revenue from various sources within the country and reduce expenditure as the major fiscal issue. The yearly budget amendments were therefore geared towards increased revenue capture from the oil industry and trade taxes. In practical terms, Nigeria’s tax and fiscal policy measures appeared to have been largely driven by the need to promote the rapid growth of the economy, generate employment, maintain price levels, and improve the balance-of-payment conditions of the country.

In 2012, the FG embarked on the drafting of the National Tax Policy (NTP). The NTP of 2012[[387]](#footnote-386), was aimed at designing a vital platform for optimizing revenue generation to facilitate socio-economic development of the country. The policy was aimed at encouraging fiscal responsibility and accountability to Nigerians. The NTP was also meant to reflect the principle of fiscal federalism by ensuring equitable sharing of revenues and taxation collected. It did not however specifically address the petroleum industry and only stated that the fiscal regime for oil and gas companies in Nigeria (Petroleum Profit Tax (PPT), which applies to Joint Venture (JV) contracts, and the Production Sharing Contracts (PSC) require strengthening in view of their growing importance[[388]](#footnote-387). It recommended that in view of this, all stakeholders should support the initiatives to reform the Oil and Gas sector by the passage of the Petroleum Industry Bill (PIB), which was intended to address all areas of concern in the sector.

The NTP (2012) was revised in 2017. It failed, however, to directly address the petroleum industry or articulate a petroleum fiscal or tax policy. The Nigeria petroleum sector has therefore experienced long periods of sustained tax policy review neglect and clear direction. This has in turn affected regulatory and taxation legislative development and reform. This neglect and lack of tax and fiscal policy and legislative reform of the industry and the delayed enactment of the Nigeria Petroleum Industry Bill (PIB), all gave impetus to the design and articulation of the National Oil and Gas Policy, as well as the National Petroleum Fiscal Policy documents of 2016 and 2017, respectively.

To achieve the required clarity of objectives and certainty of legislative terms, tax and fiscal policy must strike a balance between securing the revenues needed by governments to finance their social and economic programs and the need for a tax system that promotes innovation, productivity, and inclusive economic growth. Policy should be responsive, flexible, and adaptive and be expressed clearly to guide tax legislative development and the regulatory and administrative institutions. The evolution and formulation of the oil and gas, and the fiscal policy for upstream petroleum industry are examined below.

**5.2 FISCAL POLICY EVOLUTION AND UPSTREAM PETROLEUM TAXATION**

As already stated, the FG has the exclusive authority under the 1999 Constitution, to formulate and design policies for petroleum exploration, development, and production. The FG has however focused more on generating revenue for development and as such the petroleum industry in Nigeria lacked a focused, principle-based, and well-structured approach to petroleum and fiscal policy making, amidst multiple legislations and the legislative framework. It employs a multi-statute and multi-agency framework arrangement[[389]](#footnote-388) ostensibly to make it flexible for investors and broaden the revenue base. The role and responsibilities among the agencies[[390]](#footnote-389) were not always clear, thus resulting in conflicts of interest and duplication of efforts on the issues of policy, strategy, operations, monitoring, and enforcement among the government functionaries within the sector.

The FG aims to obtain the maximum value over time in terms of net receipts from petroleum sales and taxes for the treasury, by maximizing the wealth from natural resources and, at the same time, attracting foreign investment. The oil companies on their part aim to ensure that the return on capital is consistent with the risk associated with the project and with the strategic objectives of the corporation. This underscores the need to design a fiscal and tax system for the petroleum sector that achieves the following underlisted objectives:[[391]](#footnote-390)

1. supports macroeconomic stability by providing predictable and stable tax revenue flows.
2. permits capturing a greater share of the revenue during periods of high profits.
3. avoids the introduction of distorting effects through the fiscal instruments.
4. maximizes the present value of revenue receipts by providing for appropriations during the early years of production; and
5. is neutral and encourages economic efficiency as a yardstick.

Invariably, a clear ‘flexible’ and ‘progressive’ fiscal regime is one that provides the government with an adequate share of economic rent under varying conditions of profitability, and targets high economic rent through taxation. The further “downstream” a government goes to extract the rent, the less regressive the system. Signature bonuses paid before a discovery is made and royalties paid, whether a field yields a positive result or not are the most regressive forms of rent extraction. A fiscal regime that targets the extra revenue that is not required to persuade the investor to continue with the investment and that, if taxed away, will still allow the company to realize an acceptable return on its investment. There are various ways to do this. A flexible and progressive fiscal system could envisage a progressive income tax and a sliding scale royalty in the case of concessionary systems; or a progressive government take linked to petroleum prices or project rate of return in the case of production-sharing arrangements. The advantages of a flexible and a progressive mechanism for rent extraction and stability over time as market forces and project conditions change over time, and therefore limit the need for renegotiation[[392]](#footnote-391). A “neutral” fiscal regime[[393]](#footnote-392) on the one hand is one which neither encourages nor deters investments that would otherwise take place and does not impact resource allocation. On the other hand, stable regimes[[394]](#footnote-393) may be grouped under two categories: “freezing clauses” or guarantees and assurances that maintain the contract and/or fiscal terms unchanged for the duration of the project or for a certain defined term or period of time; and “equilibrium clauses” or balancing provisions that allow for adjustment of the contractual or fiscal and taxing terms over time so that a change in circumstances does not damage or benefit one party to the advantage or detriment of the other party[[395]](#footnote-394).

Nigerian petroleum operations have existed for long periods of time by combining features of a flexible and a stable regime, although stability does not necessarily equate or amount to a certain regime, just as a flexible regime does not guarantee certainty in the tax system. The flexibility and apparent stability in the system was achieved in a rather reactive manner, leaving it far from being neutral and with several in-built distortions and uncertainties. Although some uncertainty in fiscal and tax matters is an inevitable consequence of the wider uncertainties with which governments must cope in addressing their economic, political, and social objectives, a clear fiscal and tax policy, as well as administration play important roles in promoting economic growth, addressing redistributive and contractual issues, managing the complexities and uncertainties in the petroleum industry, and in achieving certainty in the tax legislative and regulatory regime of the industry.

In a survey conducted by Deloitte on behalf of the Aberdeen and Grampian Chamber of Commerce, it was established that contract and fiscal stability are primary factors in determining business confidence and ranking investment opportunities[[396]](#footnote-395). From the investing company’s standpoint, this means the search for a legislative tax system that provides for:

(i) a minimum number of front-end loaded nonprofit-sensitive taxes;

(ii) the ability to repatriate profits to shareholders in their home countries;

(iii) an overall policy environment that is transparent, predictable, stable, and based on internationally recognized industry standards and the tax legislative terms that are clear and unambiguous; and

(iv) a predictable judicial system which allows for expeditious resolution of disputes based on clear and certain tax legislative terms.

The inability of Nigeria as a resource dependent country to regularly and in a consistent manner articulate the clear fiscal policy direction and objectives for the petroleum industry, unlike the case in Norway, where the overall petroleum policy objective is to provide a framework for the profitable production of oil and gas in the long term. The petroleum taxation system in Norway is based on the rules for ordinary company taxation and are set out in the Petroleum Taxation Act of 13th June 1975, no 35 relating to the taxation of subsea petroleum deposits. However, because of the extraordinary returns on production of petroleum resources, the oil companies are subject to an additional special tax. The ordinary company rate of 25% and the special tax rate of 53% give a marginal tax rate of 78%,[[397]](#footnote-396). The contrary is the position with the Nigeria petroleum fiscal and upstream petroleum tax system with a dedicated upstream petroleum tax interacting with various other fiscal systems and taxes. This has contributed to creating distortions, uncertainty and instability in the Nigeria upstream petroleum tax system. This has also had a negative impact on the development of a progressive, flexible and predictable legislative tax framework for upstream petroleum taxation, which has in turn negatively affected investment in-flow and investment decisions on pending projects. It has, therefore, been argued that a simple responsive system may be more desirable than a theoretically ideal but complex to manage system, although this also begs the question whether this is achievable in a relatively complex industry as the petroleum industry. The Royalty and tax systems, with sliding scale features, are used by many countries, and are usually quite easy to manage. Countries such as Australia, Canada, the UK, Croatia & Italy, use sliding scales that allow systems to adapt to changes in project variables. For example, a sliding scale royalty adjusts the royalty rate based on production or oil prices. This can reduce the risk of negative cash flows when production or oil prices are low. [[398]](#footnote-397). It is also a generally accepted fact that the level of government take[[399]](#footnote-398) is inversely proportional to the quality and availability of investment opportunities. In the following portion of this section, we interrogate efforts and examine the policy documents and changes introduced[[400]](#footnote-399), within the context of the centralized fiscal federalism and the exclusive legislative command and control of petroleum operations by the FG, under the subsisting Nigerian federal Constitutions. Whilst there is nothing basically wrong with a centralised command and control framework[[401]](#footnote-400), the lack of focus and well-defined strategic objectives for the sustained development of the Nigerian petroleum industry, in contrast, for instance with the Norwegian approach to petroleum industry policy and regulation, where well defined principles for the State control are enshrined in the “Ten Oil Commandments”[[402]](#footnote-401), was an issue. The principles in the Norwegian Ten Commandments provide an enforceable policy outlook for its petroleum operations and the Norwegian government controls most of its oil interests through the State oil company “Statoil” - now rebranded as Equinor.

**5.2.1 The Introduction of the Production Sharing Contract Arrangement 1973-1990**

For the Nigerian petroleum industry, the introduction of the Production Sharing Contract (PSC) arrangement,[[403]](#footnote-402) first in 1973 with Ashland Exploration and Production Company, and later its formal extension to the other IOCs in 1990, was a significant development and marked the beginning of a fiscal policy shift, and a broadening of the concessionary and contractual frameworks for upstream petroleum operations. This development was examined in chapter 3 of this thesis. The PSC was developed to address key issues faced by the Joint Operating Agreements (JOA’s) such as the rising cost of operations and the government’s inability to adequately fund its equity participation. This, however, failed to address the significant fiscal issues and gaps in upstream petroleum taxation and regulations and introduced its own distortions to upstream taxation, as discussed in chapter 4 of this thesis. The PSC arrangement provided certain incentives and the contractual and legal structure to encourage multinational investors in the offshore acreages. The PSC Act amended the existing fiscal regime and the taxation framework under the PPTA[[404]](#footnote-403) and raised many more issues of interpretation and application arising from the different concepts and terms in use in the PSC regime.

The PPTA, on its own focused more on oil production and taxation, to the neglect of gas development and production. The need to harness natural gas and stop the gas flaring revealed gaps in the existing petroleum laws. The Petroleum Act and its subsidiary regulations had been enacted when hydrocarbon development in Nigeria focused essentially on oil. The word “oil” is used when petroleum would have captured the resource value chain and resulting policy and legislation better. Reference to oil in certain legislation, e.g. the Oil Pipelines Act, thereby inadvertently excluded gas[[405]](#footnote-404). The policy initiative by government to address upstream gas development was the grant of fiscal incentives for gas development, with the grants of incentives under the Associated Gas (AG) and Non-Associated Gas (NAG) Framework Agreements, later enacted under the PPTA and CITA, introduced some more distortionary effects in the petroleum tax system, as the incentives leveraged on the capital expenditure for oil to develop and produce gas. The notable exception to this was the project-specific tax regime for liquefied natural gas (LNG)[[406]](#footnote-405), which consisted of assurances and guarantees, and a ring-fenced fiscal, tax and legal regime. The formal and full introduction of the PSC fiscal regime in the 1990’s under the PSC Act also triggered several contentious issues, many of which went through arbitration proceedings, and thus further exposed the many fiscal, legal, regulatory, tax, royalty, gas ownership, supply, and resource allocation issues in upstream petroleum taxation.

**5.2.2 The Formulation of the National Oil and Gas Policy of 2007**

In 2007, the National Oil and Gas Policy (NOGP)[[407]](#footnote-406) was formulated. The aim of the policy was to transform the oil and gas sector in Nigeria based on the observation that both the Petroleum Act and the Nigerian National Petroleum Corporation Acts were out-dated[[408]](#footnote-407)and out of tune with contemporary realities. The policy goals of the NOGP included the transformation of NNPC into a more commercially oriented entity that can compete with the likes of other commercially viable National Oil Companies. To implement this policy and the broad guidelines contained therein, the FG constituted the 2nd Oil and Gas Sector Reforms Implementation Committee (OGIC)[[409]](#footnote-408). The 2nd Oil and Gas Sector Reforms committee mandate included the implementation of the recommendations of the 1st committee and make recommendations on the comprehensive reform of the oil and gas sector.

**5.2.3 The Formulation and Drafting of the Petroleum Industry Bill (PIB) 2008:**

The activities of this committee led to the recommendation of a new regulatory regime for the oil and gas industry. This resulted in the drafting of the Petroleum Industry Bill (PIB)[[410]](#footnote-409), which was presented to the National Assembly (NA) in 2008. The PIB proposed a comprehensive commercial, legal, fiscal, tax and governance framework review for the Nigerian oil and gas industry. Following several years of delay in the NA[[411]](#footnote-410), the bill was unbundled into three (3) bills to deal with the different components of the fiscal, commercial, legislative, regulatory and governance framework for the industry. This included the Petroleum Industry Fiscal Policy Bill (PIFB).

The unbundling of the PIB was also followed by the drafting of the National Oil Policy[[412]](#footnote-411) and the National Gas Policy[[413]](#footnote-412). The objective of the National Oil and Gas Policy is to move Nigeria away from crude oil exports into[[414]](#footnote-413) value-added activities in oil, namely refining and petrochemical industries and expanding from oil into gas-based industrialization, relying on the largely untapped, large gas reserves in Nigeria. The long-term vision of the Nigerian petroleum policy is for the country to become a nation where hydrocarbons are used as a fuel for national economic growth and not simply as a source of income.[[415]](#footnote-414) The important elements of the vision include moving the Nigerian economy away from the current situation where crude oil is exported and no further uses are made of the hydrocarbon opportunities to refining and further processing crude oil within Nigeria and making Nigeria a regional and international center for crude oil refining. Further aspects of the vision are diversifying the petroleum resource base within Nigeria, to ensure security of supply, and establishing a petroleum industry with a clear division of roles between the private and public sectors. The National Oil and Gas policy objectives are briefly examined below[[416]](#footnote-415).

**5.2.4 National Oil Policy (NOP) and National Gas Policy (NGP) 2016[[417]](#footnote-416):**

Specifically, the National Oil Policy (NOP) identified three (3) main reasons why Nigeria needed a new policy. The existing policy encourages rent seeking through crude oil export for cash business. Nigeria is also the only OPEC country without effective oil refining capacity and investments in mid-stream infrastructure (storage, terminals, transportation, and processing). Thirdly the upstream investments, and the upstream crude oil export business, suffered because of insecurity and restiveness in the Niger Delta areas where most of the petroleum operations take place in the country. Moreover, Nigerian oil and gas production has not risen in line with its potential or its peers in the Middle East or Africa. The NOP is therefore to move Nigeria away from crude oil exports into value-added activity in oil, namely refining and petrochemical industries, and expanding from oil into gas-based industrialization, relying on the largely untapped large gas reserves in Nigeria.

The National Gas Policy (NGP) on the other hand has proposed full legal separation of ownership of gas infrastructure and operations. On pricing, the policy recommends that gas pricing should be market led (without gas price regulation), except for monopoly infrastructure areas[[418]](#footnote-417), where tariffs would still be regulated in a manner that will ensure cost recovery plus an adequate and reasonable return on investment[[419]](#footnote-418). The NGP addresses in part the concern by upstream (E&P) companies that the current regulation of gas prices stifles investment in the sector, thus preventing them from utilizing available gas resources as well as meeting the domestic supply obligations. It seeks to prioritize the development of low-cost gas for the domestic market, by leveraging on the inherent value of Natural Gas Liquids (NGLs). It also seeks to develop the Gas Resource Master Plan (GRMP) to align the development of Nigeria’s gas resources with its socio-economic development priorities.[[420]](#footnote-419) The policy seeks to introduce a Model Gas Development Agreement (MGDA) which would embody commercial and fiscal terms for the development of gas resources in PSC concessions. With respect to the problem of gas flaring, the NGP proposes a mixture of the carrot and stick approach to curb gas flaring, by enforcing the following measures:

1. E&P companies to commercialize associated gas rather than re-injecting it[[421]](#footnote-420) (unless there is no viable or economic outlet or use for the gas); and
2. The adoption of new flare capture technologies to reduce emissions and increasing the gas flaring penalty to a level sufficient to de-incentivize gas flaring whilst introducing measures to encourage gas utilization.

Under the NGP, E&P companies are to be prohibited from engaging in green field (associated gas or dry gas) projects until they come up with an integrated plan for the development of hydrocarbons. The government will incentivize associated gas projects by granting contractors access to gas gathering systems.

**5.2.5 Nigeria National Petroleum Fiscal Policy (NPFP) 2017:**

The Nigeria National Petroleum Fiscal Policy (NPFP) document[[422]](#footnote-421) articulates Fiscal Rules of General Application (FRGA) through which the interests of the State and that of the investors are identified. The philosophy for the fiscal framework of petroleum policy is to set fiscal rules that are clear, transparent, globally competitive and designed to incentivize all participants. The NPFP covers seven (7) main thematic areas, which include the governance institutions or framework, funding and government participation modalities, fiscal incentives for investment, the regulatory framework and social, host community and environmental impact assessment and mitigation.

The NPFP fiscal framework is a composite of trade-offs across different objectives, i.e., early revenues versus investment efficiency, progressivity versus competitiveness, and early fiscal revenues versus tax incentives that drive a critical mass of investments. These are to be achieved through the right pricing of gas and lower royalties and clearly formulated and drafted resource tax policy and legislation.

The new fiscal policy direction of the FG for the petroleum industry therefore seeks to create a fiscally neutral regime with respect to the types of hydrocarbons to be exploited. This new direction is to be guided by six (6) key principles and consists essentially of right pricing of crude oil and products, sustainability of the resources, non-consolidation, or the non-recovery of gas costs from oil income, the separate fiscal treatment of resources, and the grant of upstream incentives for gas-development, and lastly mid-stream incentives to attract investment and build capacity in this area.

One other key area or issue requiring policy clarity or specificity on taxation treatment which is addressed by the policy is the subject of abandonment and the tax treatment of decommissioning costs. The PPTA provisions in this regard only provided for tax deduction of actual incurred cost for decommissioning on abandonment without addressing funds accrued for decommissioning[[423]](#footnote-422). The matter therefore required clarity of fiscal policy and its alignment with the PPTA provision on the tax treatment of both actual incurred costs, as well as for funds set aside or accrued for the purpose of abandonment and decommissioning of fields or assets used for producing the field.

From the foregoing, it is obvious that the failure to articulate principle-guided and market- responsive fiscal and tax policies, prior to the NPFP in 2017, coupled with, or the resort to, ad-hoc project-specific fiscal incentives aimed at achieving maximum government take in terms of economic rents, and the oil and gas development goals of Government, were clearly inadequate. This approach produced many distortions in the system and failed to address or balance the competing interests, or properly respond to the oil market and price changes. Stakeholder engagement was inadequate, and tax legislative amendments were in some cases poorly drafted[[424]](#footnote-423)and the enactments not carried out in a timely manner. Moreover, reviews or reform of policy were not regular or properly aligned with legislative review and amendment, and as such existing policy and legislation were unable to meet the dynamic and changing nature of upstream petroleum operations and taxation. The result of this was that the Nigeria upstream petroleum tax regime consisted of an amalgam of old legislations as amended by various instruments, statutes, and regulations.[[425]](#footnote-424)The series of policy and regulatory reforms were reactive and piecemeal, geared towards meeting the objective of maximizing revenue capture and lacking in progressivity.[[426]](#footnote-425)

The objective of the new policies and fiscal regime under the amended or unbundled PFIB is to create a regime that is internationally competitive, certain, clear, efficient, flexible, neutral, predictable, and progressive. It should also possess a risk- and revenue-sharing potential, be simple, stable, and transparent[[427]](#footnote-426). The new fiscal arrangements also seek to reduce the government take for the onshore and shallow water fields, where the burden is high and is impeding development of smaller new fields, particularly for small companies. It will also aim to increase the government’s take in deep water. The real challenge, however, is how these fiscal and tax terms are accurately translated in a timely manner into clear, certain, and consistent legislation and tax statutes. It has taken several years to draft and enact this into the Petroleum Industry Act (PIA) and the delay underscores the importance of having a structured and focused process for regular review in place. It also reinforces the need for competent and effective legislative drafting and the need to review the existing legislative process under the 1999 Constitution, which is briefly examined below.

**5.3 THE LEGISLATIVE PROCESS AND TAX LAW MAKING:**

The 1999 Nigerian federal Constitution specifically sets out the legislative process for the FG and the federating units in the Nigerian federation. The NA is responsible for enacting the Federal taxation statutes, which includes taxation of income, profits, and capital gains. The process is usually long drawn and uncoordinated between the two arms of the NA[[428]](#footnote-427). The annual finance appropriation bills generally cover annual fiscal and tax changes. However, the real challenge is in the process of translating and enacting policy and tax objectives into clear and accurate legislative language. The process is piecemeal, and experience has shown that the process of translating fiscal and tax policy into clear and certain statutes has been ambivalent, sometimes inconsistent, laborious, lacking in well-defined principles, objectives, timelines and the required speed. The absence of transparency and consistency in the process and the required law making and drafting expertise in specific subject matters in the finance committee is also generally lacking. The quality of legislation produced by the two arms of the NA and the clarity and preciseness required especially in petroleum taxation statutes leaves much to be desired as the personnel strive to understand policy and taxing objectives, and the various interests at play, as well as the current presidential system of governance in the country.[[429]](#footnote-428).

The NA process of making legislation is exercised by bills[[430]](#footnote-429), which can originate in either the Senate or the House of Representatives. An executive bill or any bill presented to the NA, will go through the process of three (3) readings[[431]](#footnote-430), reporting and committee stage before its engrossment for presentation to the President for assent. A bill will not become a law until the President assents[[432]](#footnote-431) to it. Where the President withholds assent, it can be presented to both the Senate and House of Representatives, after which it can become law, passed by a two-thirds majority of each house[[433]](#footnote-432). In this case, the President’s assent will not be required. This detailed scrutiny which should ordinarily recognise the need for expertise, stakeholder engagement, speed, and a defined timeline as is the case in the UK and Canada, is not adequately defined and structured to produce the required results in the NA in Nigeria. The degree of precision and accuracy required for taxation has not always been attained. There is insufficient analysis, research, and stakeholder engagement. In the design and formulation of the NOP, NGP and the NNFP documents, there was a concerted attempt by the NNPC, the MOF and the MPR to work together. However, given the absence of existing structures and processes, the process dragged on for months before the FG approved the policy documents, and a few more years before the fiscal and regulatory bills were passed into law. There were further delays due to the ineffective coordination of the drafting of the relevant legislation by the NA and the Ministry of Justice, as well as the poor management of the various interest groups, including the private sector and the host community. The lack of structure to the process, as well as the prevailing legislative competency gaps and lack of quality assurance in the entire process clearly exacerbated the delay and uncertainty in the system. These are some of the concerns that will need to be addressed if the quality of legislation generally, and tax legislation, is to improve. The enactment of the PIB into the PIA has taken several years to happen due to the inefficiencies in the system. The lobbying and expert facilitation of policy and law making that is required is largely missing with the NA. There is an obvious need for capacity building in this and related areas. Also, the stakeholder engagement required, especially with the industry to improve quality of statutes can certainly be better. These issues and competency gaps informed the need for expert input from several ad hoc study groups and expert sub-committees to support the NA to rework the Bill and resolve the conflicting agendas and interests of the stakeholders and the host community. This intervention was quite noticeable and clearly contributed to the final enactment of the PIA with the assent of the president of Nigeria on 16th August 2021[[434]](#footnote-433). The fiscal and legislative requirements of the petroleum industry can certainly be achieved by skills and competency improvement and more education on the dynamics of the industry to avoid misconceptions on the part of the NA.

**CONCLUSION**

A well-formulated petroleum fiscal and tax policy is a prerequisite for the development of clear and certain tax legislation. A well-articulated fiscal and tax policy allows for the capture of a portion of wealth extracted from the ground, and the investment of the revenues in a regulated manner to attend to short, medium, and long-term needs of the country. The existing policies, governance framework and process in the Nigeria petroleum industry lacked focus and effective coordination. For long periods of time, it was not responsive to the volatile oil and gas market, and the existing fiscal regimes failed to complement themselves, thus resulting in distortions. The fiscal policy and legislative structure therefore lacked clarity, predictability, or the responsiveness to address the concerns of investors and the government. The existing process lacked well-defined rules or objectives, structure, and clear timelines for translating policy and principles into clear and consistently understood tax legislation. We will in chapter 6 carry out a survey of stakeholders and experts in the industry in Nigeria, and in chapters 7 & 8 examine the process and the learnings in our two comparator countries of the United Kingdom and Canada, respectively.

**CHAPTER 6**

**SURVEY OF STAKEHOLDERS AND PRACTITIONERS IN THE NIGERIA UPSTREAM PETROLEUM INDUSTRY**

**6.0 INTRODUCTION**

Certainty in tax matters is an important objective, and governments and businesses take a wide range of measures in its pursuit. Beyond seeking clarity, precision and avoiding ambiguity in policy and law, predictability and simplicity in tax legislation, and consistency in understanding and implementation of the substance and form of legislation, governments commonly adopt a variety of measures serving to limit their own discretion and provide certainty to businesses, taxpayers, and confidence to investors. These may include, for instance, advance rulings and pricing agreements (APSs), providing safe harbors, guarantees, stability clauses or entering into agreements or memoranda of understanding (MOUs). In the case of the Nigeria petroleum industry, these aim for fiscal stability and clarity by providing project-specific fiscal and tax incentives, guarantees and assurances and by defining objective goals, delegating powers to independent judiciaries or revenue authorities, and committing to international tax standards and tax treaties, etc. In chapters 3, 4 and 5, of this thesis, we have examined many of these issues, including the constitutional basis and impetus for fiscal federalism and the exercise of taxing powers in Nigeria as they affect the petroleum industry in Nigeria. Whilst, we have identified that unclear, poorly or inadequately articulated and drafted policy and laws, create ambiguity, gaps and uncertainty, the process of tax policy and tax law making, and the implementation can also contribute to tax uncertainty in the tax system. Having a methodical and consultative policy and tax design process can help to improve clarity of tax policy and laws.

The complexity or lack of clarity in the tax code, and unpredictable or inconsistent treatment by the tax authority and the tax adjudication machinery, raise two related but distinct issues, both of which are critical to improving tax certainty with respect to the clarity and transparency of the tax law and the ease of taxpayer compliance with the law. These are: (i) the policy and tax law design, the implementation and monitoring process; and (ii) the quality of law drafting itself, and use of language as discussed in Chapters 1 & 2 of this thesis. Since there may be little solid empirical evidence on this, and perhaps more of anecdotal evidence, in measuring tax certainty or uncertainty, we will in this chapter examine the narrative from the survey questionnaire and results[[435]](#footnote-434) as well as the views and thoughts of the critical stakeholders and tax practitioners, the tax authority, academics, tax managers of the IOC/INOC, and the taxpayers etc., as they pertain to policy design and tax legislation uncertainty in the Nigerian upstream petroleum tax system. The questionnaires were distributed using the Google form link and the responses and views shared by respondents are analysed below. It is important to state that this survey was carried out prior to the enactment and coming into force of the long-awaited Petroleum Industry Act (PIA), which is examined in chapter 9 of this Thesis.

**6.1 ADMINISTRATION OF SURVEY QUESTIONNAIRE AND METHODOLOGY**

A total of one hundred and forty-six questionnaires[[436]](#footnote-435) were administered using Google online form. A total of twenty questions were asked on topics ranging from engagement on policy design and articulation, legislative drafting and enactment, legislative review and reform, tax administration and judicial interpretation and tax compliance. The information and data gathered from the survey questionnaires and the additional comments, observations and follow up calls are all examined to ascertain the degree and significance of the factors affecting policy and tax legislation design, clarity, understanding, the administration, interpretation, and compliance in the upstream petroleum industry in Nigeria. The survey questionnaire questions and responses are reproduced as **appendices** **I & II**. The link to the questionnaire is also provided -see **Section 6.3** below.

**Table 6.1: Analysis of Respondent Rate of Questionnaire**

|  |  |  |
| --- | --- | --- |
| **QUESTIONNAIRE** | **FREQUENCY** | **VALID PERCENTAGE** |
| Valid  Unfilled | 79  67 | 54.1%  45.9% |
| **Total** | 146 | 100% |

Source: Google Forms

The table above shows the details of the response, which was above average. Of the 146 total expected responses, 67 persons surveyed did not respond (45.9%), while 79 respondents completed and returned their form for analysis. This reflected a 54.1% percent response rate, relevant enough to make required inferences and draw conclusions on the variables and factors examined. As already stated, many of these respondents provided additional written comments and views in the comments section provided in the questionnaire.

**6. 2** **PROFILES OF RESPONDENTS**

The table below shows the profile of the respondents surveyed. These include tax practitioners, tax advisers, lawyers, academics, and consultants, finance managers, academics, and the tax administration (FIRS) officials, as well as officers of the Tax Appeal Tribunal (TAT) and the judiciary[[437]](#footnote-436). The key themes examined are fiscal policy and tax objectives setting and tax legislation making in the Nigeria upstream petroleum industry. Language and tax law interpretation and administration, tax dispute resolution process, and fiscal and tax policy review and reform process were also examined. The impact of drafting competency in achieving clarity, certainty and consistent understanding and implementation of tax policy and tax legislation were also examined.

**Table 6.2 Distribution of the Respondents**

|  |  |  |  |
| --- | --- | --- | --- |
| **Distribution by Occupation** | | | |
| **Occupation** | **Frequency** | **% of Total** | **Cumulative Freq.** |
| Financial Officer | 1 | 1.3% | 1.3% |
| Tax Authorities | 18 | 22.8% | 24.1% |
| Professional Advisers | 41 | 51.9% | 75.9% |
| Legal Officers | 10 | 12.7% | 88.6% |
| Others | 9 | 11.4% | 100% |
| Total | 79 | 100% |  |

**Table 6.2 highlights the distribution of the respondents.**

From table 6.2 above, a total of 79 respondents who are either connected to, engaged in, or have provided tax advisory, administrative, judicial, or training services to the Nigeria upstream petroleum sector were sampled in this study. The breakdown of the profile of respondents shows that there was 1 (1.3%) Financial Officer, 18 (22.8%) Tax Authorities, 41 (51.9%) Professional Advisers, 10 (12.7%) Legal Officers, and 9 (11.4%) connected persons, who filled the forms. The responses to the questions are analyzed in section 6.3 below[[438]](#footnote-437).

**6.3 PRESENTATION AND ANALYSIS OF SURVEY RESPONSES**

On a scale of 5 to 1, respondents were asked to use 5 when the factor is extremely important or significant, and lower numbers when the factor is progressively less important or significant in ascertaining how tax and fiscal policy, tax legislation language, tax administration and the regular stakeholder engagement and other related factors affect the design, understanding and application of fiscal policy and taxation. In summary, respondents specified whether they strongly agreed (SA) (5), agreed(A) (4), undecided (U) (3), disagreed (D) (2), or strongly disagreed (SD) (1) with the importance or significance of the variables surveyed. The respondents were encouraged to provide their additional comments and perspectives on the variables in the comments section of the questionnaire. Below is the link to the Google form for the responses:

<https://docs.google.com/forms/d/e/1FAIpQLSc1sNcvflT2jA9ZidhYs7fC1_Jayta2dEUAwvAzZ2ziiQaDw/viewform?usp=sf_link->.

The tables below illustrate the frequency and percentage of responses and the explanations for each of the factors examined.

**6.3.1. Policy Design, Transparent Engagement and Constitutional Framework:**

**Table** **6.3.1 Frequency Distribution for Upstream Petroleum Taxing Regime**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **S/N** | **QUESTIONS** | **FREQUENCY AND PERCENTAGE** | | | | | **TOTAL** |
| **SD**  **1** | **D**  **2** | **U**  **3** | **A**  **4** | **SA**  **5** |
| 1 | It is important to have regular and transparent engagement between the relevant agencies of government and taxpayers in the annual budgeting and fiscal objectives setting. | 0  0% | 2  2.6% | 5  6.6% | 10  13.2% | 59  77.6% | 76  96.2% |
| 2 | Clear policy articulation is essential in drafting clear upstream oil and gas tax legislation. | 0  0% | 0  0% | 2  2.7% | 12  16% | 61  81.3% | 75  94.9% |
| 3 | Clear tax objectives setting is essential for drafting clear and certain upstream petroleum tax laws. | 0  0% | 1  1.3% | 6  7.9% | 13  17.1% | 56  73.7% | 76  96.2% |
| 4 | Clear and well-defined words and concepts are essential for the consistent understanding and interpretation of upstream petroleum fiscal and tax legislation. | 0  0% | 0  0% | 3  4% | 10  13.3% | 62  82.7% | 75  94.9% |
| 5 | The ownership of natural resources under the 1999 Nigerian Constitution creates a vertical imbalance and the competition for revenue between the FG & federating units. | 0  0% | 2  2.6% | 16  21.1% | 25  32.9% | 33  43.4% | 76  96.2% |

Drawing from table 6.3.1, fifty-nine (59) respondents strongly agreed that transparent engagement between the relevant agencies of government and taxpayers in the fiscal objectives setting and the annual budget exercise are essential for achieving clarity, certainty, and consistency in the design and formulation of fiscal policy and tax legislation making[[439]](#footnote-438). Additionally, sixty-one (61) respondents strongly agreed that clear policy articulation is important in drafting clear upstream oil and gas tax legislation. Also, fifty-six (56) respondents strongly agreed that clear fiscal policy objectives, principle-driven tax policy, and drafting competence by the relevant ministries and agencies[[440]](#footnote-439), play a vital role in making and drafting clear and certain upstream petroleum tax laws.

In summary, it can be inferred that inadequately articulated fiscal policy and tax objectives, including tax avoidance objectives, and delayed review or absence of fiscal reforms and the tax laws were some of the factors identified as contributory to the lack of clarity and predictability of the upstream petroleum tax system. It can be further inferred that structured, open and responsive, and regular engagement with stakeholders, taxpayers, governments and policy makers, tax officials, tax practitioners, professionals, and experts, as well as indigenous and international operators in the sector will facilitate the formulation, development, drafting of policy positions and legislation, and the understanding and consistent interpretation of tax policies and objectives. This underscores the need for government to demonstrate leadership in fiscal policy formulation and tax objective setting, whilst engaging with stakeholder in an open, transparent, and principle-guided manner.

Respondents were also of the view that language use, words and concepts provide the basis for expressing policy and legislation and that ambiguity in words, terms and concepts used in tax statutes have often resulted in lack of understanding of the policy and tax objectives, thus making difficult the interpretation of policy or tax objectives. Seventy-two (72) respondents agreed that the use of simple language is important and essential in achieving clarity and certainty in upstream oil and gas fiscal and tax policy and tax legislation. Rule-based legislative drafting and interpretation is therefore recommended for use, as well as the simple and easy-to-understand language and well-defined technical terms and concepts.

Furthermore, respondents observed that the National Tax Policy (NTP) should not be a redundant policy document but be responsive in addressing issues arising from taxation generally, and the petroleum industry as a significant contributor to the GDP of the country. The NTP should as a matter of priority guide the thinking, policy formulation and execution of strategies and objectives for clarity in fiscal and tax law making and administration at all levels, including assessment, collection, and regulation.

**6.3.2 Constitutional and Statutory Framework**

**Table** **6.3.2 Frequency Distribution for Constitutional and Statutory Framework and Regulations**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **S/N** | **QUESTIONS** | **FREQUENCY AND PERCENTAGE** | | | | | **TOTAL** |
| **SD**  **1** | **D**  **2** | **U**  **3** | **A**  **4** | **SA**  **5** |
| 1 | The exclusive control of fiscal and income and profits taxing powers over petroleum resources under the 1999 Constitution by the FG creates revenue tension and multiple levies. | 3  3.9% | 5  6.6% | 18  23.7% | 30  39.5% | 20  26.3% | 76  96.2% |
| 2 | The interaction of fiscal regimes, taxing legislation, extra-statutory agreements, and directives are a source of uncertainty and confusion in the Upstream petroleum tax system. | 1  1.3% | 3  4% | 7  9.3% | 31  41.3% | 33  44% | 75  94.9% |
| 3 | The age of the various petroleum taxing statutes and regulations, and the delay or lack of reform has significantly impacted the clarity of legislation and the level of certainty in upstream taxation. | 0  0% | 1  1.3% | 14  18.7% | 24  32% | 36  48% | 75  94.9% |
| 4 | Ad-hoc fiscal incentives, piecemeal amendment of the PPTA, and the extra-legal agreements, are important sources of uncertainty[[441]](#footnote-440). | 0  0% | 6  8% | 18  24% | 28  37.3% | 23  30.7% | 75  94.9% |

Respondents strongly agreed that the exclusive allocation of fiscal power for income and profit taxing powers under the 1999 Nigerian Constitution to the FG, to the exclusion of the federating states and local governments, has created tensions for revenue capture, thus affecting the exercise of tax legislative powers, consistent interpretation and administration of upstream oil and gas tax legislation. The introduction of the Taxes and Levies (Approved List for Collection) Act, as amended[[442]](#footnote-441), to harmonize the collection of taxes by the federating units, therefore did little to curb this confusion and the distortions of multiple taxes on petroleum taxation. Also, respondents observed that the interaction of fiscal regimes in upstream petroleum taxation, with objectives which were not always aligned or well-defined, created distortions affecting the level of clarity and predictability of taxing terms.

It was also observed that the PPTA, and the PA, which both predate the 1999 Constitution, have been amended piecemeal and required a principle-guided comprehensive fiscal and legislative reform to achieve clarity, preciseness and be fit for purpose as well as responsive. Respondents agreed that ad hoc fiscal incentives and amendments present tax advantages for some companies as well as an opportunity for mischief and corruption by some agencies with quasi-regulatory functions, and by some officials.

**6.3.3 Tax Authority and Taxpayer Understanding of Legislation**

**Table** **6.3.3 Frequency Distribution for Tax Authority and the Taxpayer Understanding of Tax legislation.**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **S/N** | **QUESTIONS** | **FREQUENCY AND PERCENTAGE** | | | | | **TOTAL** |
| **SD**  **1** | **D**  **2** | **U**  **3** | **A**  **4** | **SA**  **5** |
| 1 | Principle driven tax policy and tax legislation making is essential for consistent interpretation and application of tax legislation. | 0  0% | 0  0% | 4  5.3% | 11  14.7% | 60  80% | 75  94.9% |
| 2 | Well defined words, concepts, and terms are essential for understanding and tax compliance. | 0  0% | 0  0% | 2  2.7% | 4  5.3% | 69  92% | 75  94.9% |
| 3 | The existence of multiple tax rates for the JV concessions and its interaction with the PSC rate and incentives[[443]](#footnote-442) have significant impact on upstream petroleum taxation. | 2  2.7% | 7  9.3% | 28  37.3% | 22  29.3% | 16  21.3% | 75  94.9% |
| 4 | The introduction of the two-tier hydrocarbon and corporate income tax regime under the proposed Petroleum Industry Act (PIA), will impact the effective tax rate (ETR) and the stability of upstream petroleum taxation. | 2  2.7% | 3  4% | 12  16% | 33  44% | 25  33.3% | 75  94.9% |
| 5 | FIRS circulars and guidelines, and clarification have implications for consistent understanding of Nigeria upstream oil and gas tax legislation. | 1  1.3% | 5  6.7% | 10  13.3% | 15  20% | 44  58.7% | 75  94.9% |

From the above table 6.3.3, sixty (60) respondents strongly agreed that principle-driven tax policy and legislation making, and interpretation are key to the understanding and consistent application of tax legislation and compliance by the tax authority and taxpayers. Also, sixty-nine (69) respondents strongly agreed that simple language and well-defined words and concepts are required for clear understanding as well as effective compliance and administration.  It was also observed that a proper understanding of the intricacies of the oil and gas industry is essential for effective tax administration[[444]](#footnote-443).

It was observed that multiple tax rates applicable under the petroleum profits tax regime, under the PPTA as amended by the PSC Act[[445]](#footnote-444), and the combination of the concession and contract fiscal systems have resulted in distortions and overlaps which affect clarity and the consistent interpretation and application of upstream petroleum taxation. Invariably, the improper delineation of the boundaries between the regimes has sometimes resulted in the discriminatory treatment of taxpayers and tax assets or operations[[446]](#footnote-445).

The respondent also stated that the introduction of hydrocarbon tax (HT) and corporate income tax (CIT) under the PIA as proposed to replace PPT upstream petroleum taxation under the PPTA[[447]](#footnote-446), would have significant implications for the marginal ETR. Respondents also observed that FIRS circulars are important in providing further clarity to tax laws, although not binding and some of the circulars tended to be revenue driven and therefore conflicting. There is therefore the need to build capacity, expertise, and experience in the administration of the PIA.

**6.3.4 Tax Adjudication and Dispute Resolution:**

**Table** **6.3.4 Frequency Distribution for Tax Adjudication and Dispute Resolution Process**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **S/N** | **QUESTIONS** | **FREQUENCY AND PERCENTAGE** | | | | | **TOTAL** |
| **SD**  **1** | **D**  **2** | **U**  **3** | **A**  **4** | **SA**  **5** |
| 1 | Adequate understanding of Upstream tax legislation by Tax and judicial officers is required to achieve consistent and clear judicial decisions | 0  0% | 0  0% | 2  2.7% | 3  4% | 70  93.3% | 75  94.9% |
| 2 | A transparent tax appeal process and timely tax dispute resolution is important for achieving certainty in the tax system. | 0  0% | 0  0% | 2  2.7% | 11  14.7% | 62  82.7% | 75  94.9% |
| 3 | Clear and consistent judicial decisions are essential for achieving tax certainty. | 0  0% | 7  9.5% | 25  33.8% | 24  32.4% | 18  24.3% | 74  93.7% |

On the significance of tax adjudication and the dispute resolution process, and as may be inferred from table 6.3.4. above, seventy (70) respondents, with a percentage of 93.3% strongly agreed that it is important for judicial officers, the Tribunals, and the Courts, to have adequate understanding of taxation principles and upstream fiscal policy and tax legislation. Respondents also agreed that it is essential for the clear and consistent interpretation and implementation of upstream petroleum tax legislation that the disputed resolution process must be transparent and judicial officers be properly equipped and knowledgeable in taxation principles. It was also observed that some of the administrative and judicial decisions may not have been based on well-defined taxing principle, but rather driven more by tax avoidance or revenue generation, thus creating conflicting taxing jurisprudence. Respondents further observed that the TAT decisions were generally more commercially consistent than the FHC decisions, in terms of speed of dispute resolution and clarity and the level of understanding of taxing principles.

**6.3.5 Policy and Tax law Reform**

**Table** **6.3.5 Frequency Distribution for Fiscal and Tax Policy and Tax Law reform**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **S/N** | **QUESTIONS** | **FREQUENCY AND PERCENTAGE** | | | | | **TOTAL** |
| **SD**  **1** | **D**  **2** | **U**  **3** | **A**  **4** | **SA**  **5** |
| 1 | The regular structured fiscal and tax policy review and tax law reform is a requirement for achieving clarity in tax law and certainty in the tax system. | 0  0% | 0  0% | 5  6.6% | 22  28.9% | 49  64.5% | 76  96.2% |
| 2 | The timely fiscal and tax policy and tax law reform creates certainty in the tax system | 0  0% | 1  1.3% | 11  14.5% | 17  22.4% | 47  61.8% | 76  96.2% |
| 3 | The proposed two-tier income tax system, of hydrocarbon tax (HT) and the company income tax (CIT) under the Petroleum Industry Act (PIA) will reduce the effective tax rate (ETR) for upstream petroleum taxation. | 0  0% | 4  5.3% | 10  13.3% | 39  52% | 22  29.3% | 75  94.9% |

From table 6.3.5, which deals with fiscal and tax law reform; respondents strongly agreed that a structured and timely fiscal and tax policy review program, and tax law reform and amendment are required to achieve clarity, predictability, and consistent understanding of upstream petroleum tax legislation. The delay in fiscal and tax law review and reform is therefore a major contributor to the uncertainty, and lack of competitiveness of upstream petroleum taxation in Nigeria.

**SUMMARY OF FINDINGS FROM THE SURVEY:**

The survey and our analysis of the responses to the questionnaire, and the views expressed by some respondents, especially the subject matter experts, indicate that, despite the absence of solid empirical evidence which may make it difficult to measure tax uncertainty, the following key findings and conclusions may be drawn from the survey:

* A clear, progressive, and properly defined fiscal and principle-driven tax policy objective is critical to articulating and making clear tax laws and regulations, as well as the design and formulation of a competitive and neutral tax system for a complex industry such as the petroleum industry, with its fair share of uncertain variables.
* Mutual trust and understanding between the government, the industry operators and other stakeholders can be achieved through open, transparent, and structured engagement. This will facilitate the design, formulation and implementation of tax legislative terms and create an environment for effective compliance. This mutual trust will enhance the articulation of better objectives and a clearer vision of its economic and fiscal goals.
* The age and the language of the legislation and regulations, and the centralized constitutional and fiscal federalism pitches the commanding control of the Nigerian FG against the federating units, and evidently contributes to creating distortions in the tax system and the incidence of multiple taxes and levies in the petroleum tax system.
* The delay in the review and the lack of a comprehensive reform agenda, and the piecemeal amendments of the fiscal regimes and the interaction between the various income and transaction taxes in the Nigerian upstream petroleum industry contribute to creating the distortions in the upstream petroleum tax system.
* Research and professional expertise as well as sustained fiscal and tax policy direction are required for formulating clear objectives and the drafting of legislation. To remain competitive, an open-book, rule-based engagement is important.
* The interaction of different fiscal and tax regimes with different concepts and inadequately defined terms creates a complex or confusing eco-system for effective taxation. This invariably results in contentious issues and multiple interpretations of tax legislation, which may be perfectly legitimate.
* The treatment of tax issues by the tax authority in a simple and predictable manner, as well as the real or perceived inconsistency in judicial decisions, are major sources of uncertainty in tax legislative interpretation, implementation, and compliance. For effective tax administration, there is a need for clear and timely issuance of binding rulings and technical interpretations based on clear tax provisions which impose charging obligations.

In conclusion, the survey establishes the linkages between fiscal uncertainty, tax legislative certainty, and regular stakeholder engagement. Advance draft policy and draft legislation should be circulated for interaction by relevant stakeholder, as this enhances understanding, and the clarity of tax terms and the language used in tax legislation. It also reinforces the need for responsive fiscal policy and tax law reform.

The substance and nature of policy must be properly articulated, and the legislation and regulations competently drafted to reflect the substance of clear fiscal and tax policy objectives. The policy objectives should be to achieve a fair share of returns on the assets and investments, as this impact acceptance, understanding, trust and compliance levels.

In the following chapters 7 & 8 of the thesis, we examine how these factors and issues are addressed in our two comparator jurisdictions of the United Kingdom and Canada respectively, and any learnings for the Nigeria upstream petroleum industry tax system.

**CHAPTER 7**

**POLICY AND TAX LAW MAKING IN THE UNITED KINGDOM UPSTREAM PETROLEUM INDUSTRY – A COMPARATIVE REVIEW**

**7.0 INTRODUCTION**

The UK Petroleum industry plays a central role in the economy of the United Kingdom[[448]](#footnote-447). Successive UK administrations have developed a fiscal regime which encourages companies to explore for and develop the nation’s oil and gas reserves whilst aiming to ensure that an appropriate share of the benefits accrue to the UK economy. Although the North Sea is a relatively high-cost production area, its high-quality crude oil, political stability, and proximity to major European consumer markets have allowed it to play a major role in world oil and gas activity. Credit must be given to the clear policy objectives and the sustained direction of the UK, in terms of its tax, fiscal and monetary policy which have resulted in certainty and stability for the UK petroleum industry, even in the context of a volatile and constantly changing industry.

Following the discovery of gas in the Groningen area of the Netherlands and the first British discovery of gas in the West Sole field, off the coast of East Anglia,[[449]](#footnote-448) of the southern North Sea, the United Kingdom (UK) petroleum industry grew rapidly. In 1985 the UK produced more oil and gas than Saudi Arabia, i.e., 4.58 % of the world’s daily oil and gas production.[[450]](#footnote-449) Its world ranking was fifth at this time in terms of output. In subsequent years, it ranked sixth and recently in December 2019, the UK was placed 8th, ahead of Nigeria and Brazil, for planned oil and gas expansion with undeveloped and undiscovered fields adding a further 14.3 billion barrels of oil and gas – 2.5 times more than the 5.7 barrels that were currently produced[[451]](#footnote-450). Oil and Gas (O&G) account for more than three-quarters of the UK's total primary energy needs[[452]](#footnote-451). Oil provides 97 per cent of the fuel for transport, and gas is a key fuel for heating and electricity generation. It also earns valuable export and tax revenues to support the UK economy.[[453]](#footnote-452)

The policy of the UK governments has ensured that the North Sea became the center of one of the world’s most productive energy industries[[454]](#footnote-453). The North Sea has three unique characteristics, which make it a recognized O&G region. These are:

1) rapid development when the world demand for energy was heavy, and when the Organization of the Petroleum Exporting Countries (OPEC) was at its most powerful;

2) location in the center of a major refining and consuming area; and

3) the creation of highly active spot and forward markets for crude oil.

The water depth and the weather conditions make the North Sea different from other O&G producing areas, for example, the Middle East and the Gulf of Mexico. However, during the 1960s, the North Sea was still a new oil region, and it had development and production problems.[[455]](#footnote-454) The [UK Continental Shelf](https://en.wikipedia.org/wiki/United_Kingdom_Continental_Shelf" \o "United Kingdom Continental Shelf) production peaked in 1999, and in 2016 the sector produced 62,906,000[[456]](#footnote-455) cubic metres of oil and gas, meeting more than half of the UK's O&G needs. The projections are that there could still be up to 3.18 billion cubic metres of O&G still to recover from the UK's offshore fields. It is further projected that O&G will still provide two-thirds of UK total primary energy needs by 2035.[[457]](#footnote-456) In 2017, capital investment in the UK offshore O&G industry was £5.6 billion. The O&G industry has therefore been a critical contributor to the UK economy and, since 1970, the industry has paid almost £330 billion in production tax.

Petroleum Revenue Tax (PRT)[[458]](#footnote-457) is a [direct tax](https://en.wikipedia.org/wiki/Direct_tax" \o "Direct tax) collected in the [UK](https://en.wikipedia.org/wiki/United_Kingdom" \o "United Kingdom). It was introduced under the Oil Taxation [Act 1975](https://en.wikipedia.org/wiki/Oil_Taxation_Act_1975" \o "Oil Taxation Act 1975)[[459]](#footnote-458), soon after the [Labor](https://en.wikipedia.org/wiki/Labour_Party_(UK)" \o "Labour Party (UK)) government returned to power and in the immediate aftermath of the [1973 energy crisis](https://en.wikipedia.org/wiki/1973_energy_crisis" \o "1973 energy crisis). PRT was intended to ensure a "fairer share of profits for the nation" from the exploitation of the UK's [Continental Shelf](https://en.wikipedia.org/wiki/Continental_shelf" \o "Continental shelf), while ensuring a "suitable return" on the capital investment by oil companies.

It is therefore the policy of the UK Government to do all it can to maximize the economic recovery of its indigenous hydrocarbon reserves, and this has clearly influenced the direction and substance of UK petroleum taxes, as well as its level of clarity and stability in operations.

**7.1** **POLICY, TAX LAW MAKING AND REGULATORY FRAMEWORK**

The process for making tax policy in the UK is centralized, with control vested in the Chancellor of the Exchequer.[[460]](#footnote-459) The responsibility for the tax policy process is shared by His Majesty’s Treasury (HMT) and His Majesty’s Revenue and Customs (HMRC) with HMT doing the broad tax policy work and HMRC the technical aspects[[461]](#footnote-460). When this shared responsibility works, it works well; however, apparently it does not always work well as not all policy is evidence based[[462]](#footnote-461). Drafting is done separately by the Office of Parliamentary Counsel on instructions from HMRC.

The government adopted a new approach to making tax policy with the publication in June 2010[[463]](#footnote-462) of Tax Policy Making (TPM): A New Approach[[464]](#footnote-463). The Treasury reaffirmed and updated the policy in December 2017. The process includes five stages of the tax policy cycle and three in the policy development phase, and two further stages. The first stage is setting out the objectives and identifying the options. The second stage is determining the best option and developing a framework for implementation, including detailed policy design. The third stage is drafting the legislation to effect the proposed changes, whilst the fourth stage is implementation and monitoring the change. The fifth stage is the review and evaluation of the changes. Different types of evidence are needed at every stage of the process, and the 2010 and 2017 Treasury documents both commit to regular consultation throughout a tax policy’s development where possible. With the “TPM” approach, the government committed to consult on all tax changes, even minor ones, and at all stages of the tax policy process. Previously, consultation was increasingly a feature of the UK landscape, but the incoming government wanted to formalize the process, although consultation is a code of practice rather than a statutory requirement. This new approach appears to be working well generally, although it has not always been adhered to and some of the departures have arguably served to emphasize its importance. The strengths of the UK tax policy process are, therefore, its:

1. centralized decision making, with HMT having primary responsibility, and
2. the government’s commitment to extensive public consultation on tax changes.

The weaknesses of the process are the following[[465]](#footnote-464):

1. Extensive consultations are time-consuming and necessitate a serious commitment of human resources.
2. HMT recruit’s generalists rather than tax specialists, and they lack experience in dealing with tax and tax policy issues. The structure of the process is not conducive to building such experience, since teams that work on policy issues are typically disbanded once a project is completed.
3. There is seldom, if ever, a formal post-implementation review of tax legislation. There is a lack of long-term strategic thinking about the tax system, which makes it difficult to evaluate short-term changes.
4. There is no competing tax policy advice, from outside government or from Parliament to the advice provided by HMT, though naturally there are many submissions from professional and business bodies and other interested parties.

Following a review carried out in 2014, the Sir Ian Wood Commission[[466]](#footnote-465) recommended establishing a new regulator, the Oil and Gas Authority. The Commission also recommended a new tax system with expanded allowances to create certainty and clarity over issues such as decommissioning costs to support investment by companies based on a revised regulatory arrangement with long-term effect on the fiscal regime[[467]](#footnote-466). This was to ensure that the tax system and the regulations work together to support economic recovery as the basin matures. The clear focus of the review was to ensure a more competitive, simple, and predictable fiscal regime for the O&G industry. The Sir Ian Wood Commission did not recommend abandoning the UK’s current tax system, which was based on taxation of ringfenced profits[[468]](#footnote-467). The Government avoided this approach to prevent excessive disruption and uncertainty at a time when supporting investment was paramount. The review did not affect the mainstream elements of the UK tax system[[469]](#footnote-468) as they apply to the industry and its supply chain, including Income Tax, National Insurance Contributions, VAT, and mainstream Corporation Tax, as these changes are considered to have wider implications for the UK tax system.

The principal legislation governing exploration and production of crude oil, gas and shale gas in the UK is the Petroleum Act 1998 (as amended). The Petroleum Act governs all oil and gas exploration and production in the UK (other than onshore in Northern Ireland), and underpins a regime whereby licences are granted by the North Sea Transition Authority (NSTA), (and by the Welsh Ministers, for onshore oil and gas in Wales, and the Scottish Ministers, for onshore oil and gas in Scotland), to persons to “search and bore for and get” petroleum. Licence holders are granted the right to explore and develop a specified geographical area. Ownership of petroleum vests in the Crown, and petroleum produced within the licence area transfers from the Crown to the licence holder at the well head. The Petroleum Act is supplemented by the Energy Act 2016, the Infrastructure Act 2015 and various environmental and health and safety legislation.

Overall, it would be correct to state that the UK fiscal and tax policy, as well as the regulatory framework and process, are well-defined and structured to be responsive and timely. This well-defined and structured policy making process has been lacking in Nigeria. It is generally ad hoc and uncoordinated particularly for the Nigeria oil and gas industry. The process also lacks in clear timelines for the Nigeria oil and gas industry.

Prior to the 2011 Budget, the Treasury Committee (TC) published a report on tax policy setting out several principles by which tax policy making should be judged. First, that tax policy should be fair. Although we may not all accept or agree on the details of what constitutes a fair tax, a tax system which is fundamentally unfair will ultimately fail to command consent. Second, the TC stated that tax policy should support growth and encourage competition, as well as provide certainty. In virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts to resolve how the rules operate in relation to his or her tax affairs. The TC also stated that tax policy should facilitate tax certainty which requires legal clarity. This implies that tax legislation should be based on a statute which has been subjected to proper democratic scrutiny by Parliament. TC also canvassed for simplicity, which entails that tax rules should aim to be simple, understandable, and clear in their objectives. Tax policy must ensure targeting and should be clear to taxpayers, whether they are subject to the types of charges or taxes[[470]](#footnote-469). Last, the TC report stated that when anti-avoidance legislation is passed, due regard should be given to maintaining the simplicity and certainty of the tax system. In response to the TC report[[471]](#footnote-470) David Gauke, the Exchequer Secretary to the Treasury, said,

“The Government is committed to tackling tax avoidance. We asked Graham Aaronson to consider whether a UK GAAR could deter and counter tax avoidance, while providing certainty, retaining a tax regime that is attractive to businesses, and minimizing costs for businesses and HMRC.’’

The changes were welcome because it should also provide stability and the changes to the underlying rules would be kept to a minimum and policy shocks be avoided. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear. The Committee also considers that it is important that a person’s tax liability should be easy to calculate and straightforward and cheap to collect. To this end, tax policy should be practicable. The tax system must be coherent. New provisions should complement the existing tax system, not conflict with it[[472]](#footnote-471). The TC’s study and recommendation underscore the need for clear and responsive fiscal and tax policy to drive tax law certainty and tax system reform[[473]](#footnote-472).

The UK also suffers from ‘vertical imbalance’ in its tax system. This means that lower levels of government, which in the UK is local (e.g., city, district, or county councils) or regional government (e.g., Welsh or Northern Irish Assemblies and the Scottish Parliament), don’t raise enough money of their own to meet their spending obligations and instead need to rely on the central government for extra funds, usually paid in the forms of grants[[474]](#footnote-473). To deal with the vertical imbalance in the UK tax system, the government set up the Sir Michael Lyons Commission in 2003 to consider options for change for balancing the funding. Although no changes were made following this report of the Commission, the government set up a review of local government resources in March 2011 to investigate ways of giving local governments in England more control over their money. From 2013, local councils can decide how their grants from central government should be spent in their area[[475]](#footnote-474).

The critical event of the UK annual taxation calendar, which significantly affects the petroleum industry, and therefore timely and targeted changes to the petroleum tax system, is the annual Budget Statement made by the Chancellor of the Exchequer. This statement outlines the Government’s budget plans for the year, which correspondingly must be balanced with how they will raise the money to finance these plans. It is in these annual statements that most tax changes reflecting the fiscal policy objectives of the Government for the year or cycle are to be found. In 2010, the UK annual Budget Statement process which had long been criticized for lack of consultation and ad hoc changes without sufficient warning, was reviewed[[476]](#footnote-475). After a period of consultation, the coalition Government published a Draft Consultation Framework which set out five (5) concrete improvements:

1. In the case of major areas of reform, the Government will set out its rationale and policy objectives.
2. Tax policies are to be developed over a longer policy cycle, giving more time for consultation and reflection.
3. In relation to consultation, the aim is to publish more legislation in draft form, so that it can be exposed to greater scrutiny at least three months before the relevant bill is introduced.
4. The Government will adopt a more strategic approach to tax avoidance, balancing the need to protect the system from avoidance, against the desire to keep the system stable and predictable.
5. Changes in tax law will be accompanied by Tax Information and Impact notes that will explain the changes and their expected impact.

Three further important developments in the UK tax administration were introduced by the coalition government in 2010. The first was the creation of an Office of Tax Simplification (OTS)[[477]](#footnote-476). This is an independent body, attached to the Treasury, charged with finding ways to simplify the UK tax system.

Second, the coalition Government created the Office for Budget Responsibility[[478]](#footnote-477). This body provides independent economic forecasting and analysis for the Government to take political pressure out of important judgements of the state of the UK economy. This was also to ensure that the Treasury is held to better account by independent expertise.

Third, the new approach to policy making introduced a new process for undertaking impact assessments for policy changes. From Budget 2011[[479]](#footnote-478) onwards, the Government publishes Tax Information and Impact Notes (TIINs) for policy changes, once they become final, or nearly final. They are supposed to provide a clear statement of the policy objective of the legislative change, the impact on the Exchequer, the economy, individuals, businesses, and civil society. These deliberate attempts and process for designing fiscal and tax policy, enhancing understanding and administration of policy and legislative changes in the tax system in the UK[[480]](#footnote-479) are missing in the Nigeria budget formulation, fiscal[[481]](#footnote-480) and tax policy design and planning as well as the general legislative and tax administration process of the Nigeria tax system[[482]](#footnote-481).

**7.2** **THE DEVELOPMENT OF THE UK PETROLEUM FISCAL AND TAX LEGISLATIVE REGIME**

Over the years in the UK petroleum industry, successive administrations have developed clear fiscal policies, with well-defined economic and tax objectives[[483]](#footnote-482). These fiscal and tax objectives are implemented through the existing budgetary and legislative process within timelines that ensure predictability, clarity, certainty, and stability in the tax regime. Under this model, which is sadly uncoordinated and slow in Nigeria[[484]](#footnote-483), the succeeding governments in the UK, whether Labour or Conservative Government, ensure that the fiscal, legislative, and regulatory framework effectively supported and sustained the smooth running of the UK economy, and the North Sea oil and gas industry functions effectively. The UK operates a concession licensing system, with three major types of taxes, which are under constant review. The annual budgets and resulting Finance Bills affecting the UK oil and gas industry, eventually get enacted as the annual Finance Acts. This process is well interrogated and researched. The well-defined macro-economic and the oil and gas fiscal and tax objectives guide the process and outputs. HM Treasury, the Chancellor of the Exchequer, HMRC and the UK Parliament engage proactively to ensure that the legislation to facilitate the implementation of the fiscal and tax objectives are enacted in a timely manner. The process builds confidence and trust in the system, and investment planning and decision making are enhanced. The certainty and stability required in the economy keeps the UK NSCS oil and gas industry competitive. This feature is also, sadly not as effective or structured in Nigeria. The annual budgetary exercise in Nigeria focuses more on financial appropriation and expenditure, with little or no attention given to stimulating the economy and the oil and gas industry through specific fiscal and tax policies[[485]](#footnote-484).

Following a sustained engagement, review and discussions, the Parliamentary Public Accounts Committee (PAC) of the House of Lords, on the needs for the UK petroleum industry, issued its report on 14 February 1973, titled “North Sea Oil and Gas”[[486]](#footnote-485). It reflected a comprehensive review of the oil industry, government administration, regulation, and the exchequer implications[[487]](#footnote-486). The review noted that at present, the only certain revenue from many North Sea fields was the royalty and licence payments. It was particularly concerned that profits from continental shelf operations could be offset by extraneous losses and capital allowances. Consequently, the Department of Energy issued on 11 July 1974, a White Paper “United Kingdom Offshore Oil & Gas Policy”[[488]](#footnote-487). It set out the Government’s two main objectives, to secure a fairer share of profit for the nation and to maximise the balance of payments benefit, while ensuring the oil companies received a suitable return on their heavy capital investment in exploration and production. The White Paper proposed that the Government should introduce what was to become Petroleum Revenue Tax (PRT) and the Corporation Tax ring fence (CTRF). These formed the basis of the first Oil Taxation Bill (OTB). Part I of OTB imposed a new tax, Petroleum Revenue Tax (PRT), specifically targeted on the profits from oil production in the UK and from the UK Continental Shelf. The central proposition was the use of oil as the basis of taxation. This was also a major under-belly of the PPTA regime in Nigeria until the piecemeal introduction of gas fiscal incentives to the PPTA and CITA regime.

The main objectives behind PRT when it was introduced in 1974/5 were to:

* Allow a project rapidly to recover its cost, then tax it at an appropriate rate.
* Ensure that tax due was paid as early as possible.
* Ensure that projects where no economic rent was likely were protected from the tax.

Part II of OTB introduced a ring fence around corporation tax profits from UK oil production to prevent profits from the UK oil resource being diluted by losses or allowances on other activities. There were special rules for the allowance of interest and the treatment of advanced corporation tax. PRT paid by a company would be deductible in computing ring fence income for corporation tax purposes. Part III of the OTB was directed to strengthening the then existing corporation tax transfer pricing legislation in application to petroleum companies. The OTB came into law as the Oil Taxation Act 1975. These policy statements provided much of the imperatives for the evolution and development of the UK North Sea oil and gas regulatory and taxing framework. The annual budgetary pronouncements which are usually the product of extensive fiscal and economic study and analysis, basically dictated the direction of changes and the level of clarity and certainty in the UK North Sea Oil and Gas regime.

With the first British oil from the Argyle field brought ashore in 1975 and followed very soon after by BP in the massive Forties field, as well as subsequent oil discoveries, several companies, both British, European, and American, took out leases on sectors of the North Sea[[489]](#footnote-488). The UK Treasury and Exchequer working closely with Parliament to ensure that an indigenous UK petroleum industry was empowered through clear fiscal and tax policies directed at generating sufficient returns to government whilst providing fair returns to encourage private international participation in the industry. The impetus was to create a progressive and fiscally neutral tax system, with clear terms.

In effect, the evolution and development of the UK petroleum fiscal regime and legislative framework have been driven by developments in the commercial position of the industry, but also by the wider considerations of the UK’s public finances. Following another review of the UKCS by Sir Ian Wood, in the 2014 Budget cycle, the then Chancellor, George Osborne, announced the Government would “review the UK’s tax treatment of the North Sea to ensure that it continues to incentivise economic recovery as the basin matures’’[[490]](#footnote-489). In July 2014 the Government launched a call for evidence, asking for views on how the tax regime should be reformed in the light of the challenges facing the industry in future years with very clearly defined objectives. It stated:

‘The government designs the fiscal regime to support its twin objectives of maximising the economic recovery of hydrocarbon resources whilst ensuring a fair return on those resources for the nation. A ‘fair return’ implies that a share of the profits should be retained for the nation, whilst ensuring returns on the private investment needed to exploit these resources is sufficient to make extraction activity commercially attractive. This is particularly important where ownership of companies by foreign investors means corporate profits flow overseas. Overseas ownership is increasingly common with companies operating in the UKCS. In practice, the design of oil and gas taxation involves making judgements about the combination of tax measures that will achieve the right balance in meeting these objectives. A key consideration is the degree to which a lower effective tax rate will incentivise investment in more challenging fields to increase production in future. This is important not just in ensuring a future flow of tax receipts but wider economic benefits such as employment, skills, supply chain activity, exports, and security of energy supply. However, these benefits need to be balanced against the risk of incurring deadweight costs – that is, reducing the return for the nation from less economically challenging fields which would have still been commercially attractive at a higher tax rate. Another judgement is the trade-off between a simple regime which is easily understood by investors, but which fails to take account of the commercial challenges of individual fields, and a more tailored regime which seeks to match tax take to the profitability of fields, but at the cost of greater complexity. These judgements change over time as circumstances change. Some changes in tax policy are a response to changes in the commercial position of the industry, which is driven by fluctuating oil and gas prices, its cost base, and the value of future commercial opportunities. Some tax changes are a response to the wider UK fiscal position, such as the current need to reduce the fiscal deficit’[[491]](#footnote-490).

In the Autumn Statement on 3 December 2014, the Chancellor announced a cut in the Supplementary Charge (SC), as well as the withdrawal of the so-called ‘fair fuel stabilizer’[[492]](#footnote-491). The Chancellor’s announcement was accompanied by the publication of a policy document summarizing the responses received to the Government’s call for evidence[[493]](#footnote-492). The Treasury’s policy document set out the ‘key findings’ from the call for evidence as follows:

‘The fundamentals of the fiscal regime remain sound, but now is the time for significant change within the ring fence in order to attract investment. UKCS operators are facing strong competition for scarce investment whilst the economics of the basin have changed fundamentally, with implications for the overall level of tax. There are opportunities to simplify the fiscal regime to provide greater certainty, less administrative burden, and fewer distortions’[[494]](#footnote-493).

The government’s view when establishing this review was that the UK’s approach, based on taxation of ring-fenced profits, remained sound. The government had not received evidence that would suggest the UK should radically change its approach. The review focused on what would be the most appropriate structures and tax rates within the ring fence regime. Within the regime, there are clearly some aspects that are working well. Oil and gas production is highly capital intensive and so the tax treatment of capital expenditure is a key element of the regime. 100% first year capital allowances are available for virtually all capital expenditure, and it was clear that this remains a vital element of the regime. Tax relief is also available for expenditure on decommissioning, and the introduction of Decommissioning Relief Deeds[[495]](#footnote-494) from 2013 was a welcome move to ensure uncertainty over future tax relief for decommissioning does not tie up capital which would otherwise be available to invest. The introduction of field allowances[[496]](#footnote-495), which reduce a company’s liability to the SC if certain qualifying criteria are met, has supported significant investment in commercially marginal developments.[[497]](#footnote-496) More generally, stakeholders have also welcomed the level of engagement they have had with the Treasury and HMRC on fiscal issues in recent years. The government was of the view that the ring fence is sound, and it intends to make radical reform within the ring fence structure.

Further policy measures in response to falling oil prices were to follow in the 2015 Budget, and subsequent years’ budgets. These included Ring Fence Expenditure Supplement (RFES). As announced at Autumn Statement 2014, the government extended the RFES from 6 to 10 accounting periods for all ring fence oil and gas losses and qualifying pre-commencement expenditure incurred on or after 5 December 2013[[498]](#footnote-497). Also, high pressure, high temperature cluster area allowance was announced in the Autumn Statement 2014, which introduced an allowance to support the development of high pressure, high temperature projects and encourage exploration and appraisal activity in the surrounding area or ‘cluster’. The allowance exempted a portion of a company’s profits from the SC. The amount of profit exempt will equal 62.5% of the qualifying capital expenditure a company incurs in relation to a cluster from 3 December 2014 onwards. So also, the UK Continental Shelf Investment Allowance was introduced to support investment on the UK Continental Shelf, replacing the existing offshore field allowances and simplifying the existing regime. Further to the 2-percentage point cut in the SC announced at the Autumn Statement 2014, the government reduced the rate of the SC from 30% to 20% with effect from 1 January 2015. The government also reduced the rate of PRT from 50% to 35%, taking effect for chargeable periods ending after 31 December 2015[[499]](#footnote-498).

The Budget 2016 delivered the next stage of the government’s plan to ensure the fiscal regime supports the objective of maximising economic recovery while obtaining a fair return on the nation’s resources. The government effectively abolished PRT by permanently reducing the rate from 35% to 0%[[500]](#footnote-499), to simplify the regime for investors and level the playing field between investment opportunities in older fields and infrastructure and new developments[[501]](#footnote-500). The SC was further reduced from 20% to 10%, to send a strong signal that the UK is open for business and in recognition of the exceptionally challenging conditions that were currently facing the sector. The change took effect from 1 January 2016[[502]](#footnote-501).

In the 2017 Budget, HM Treasury announced plans to change tax reliefs available to operators buying and selling assets, and as of November 2018, the purchasers of an oil and gas license may be able to acquire some of the seller’s tax history and set decommissioning losses against profits earned by the seller. This rule will mean the buyer and seller of an asset are able to decide jointly to transfer some or all the seller’s tax history to the buyer for it to claim decommissioning tax relief in the future. These changes were aimed at mitigating tax-based barriers to operators transferring ownership of assets, which could lead to earlier closure of the assets with fewer resources having been recovered. HM Treasury expected the changes to have a positive net impact on tax revenues in the next five years[[503]](#footnote-502). However, the National Audit Office (NAO’s) report noted that the liability of decommissioning “ultimately falls to the government”.

In January 2019 the NAO published a report, Oil and Gas in the UK: offshore decommissioning, to “enable Parliament to consider whether the various government departments involved are protecting taxpayers’ interests effectively.” The report gave an overview of the operation of decommissioning tax reliefs and stated that while operators are responsible for decommissioning their assets, the government gives operators tax reliefs against their decommissioning costs. The tax reliefs allow operators to offset their decommissioning costs against their revenue, resulting in less of their profit being subject to tax. This can also result in the government repaying tax previously paid. Decommissioning is one example of capital expenditure incurred during business that companies can deduct from profits for tax purposes. It was a clearly stated objective by the HMT and HMRC to grant decommissioning tax reliefs to support the government’s objective to maximise the oil and gas that operators extract. They consider that reliefs make it more viable for operators to extend the life of existing assets or free up resources to invest in new exploration and production[[504]](#footnote-503).

More recently, in the years 2021 to 2022, the government budgets introduced the Energy Profits Levy (EPL) and the Electricity Generator Levy (EGL). These have been introduced to address the cost of living which has been increasing across the UK. The Energy Profits Levy took effect from 26 May 2022. At this time the Treasury confirmed it would be legislated by a standalone Bill[[505]](#footnote-504).

The above progressive changes to the UK fiscal regime and legislation may therefore qualify it to generally be classified as liberal and proprietorial[[506]](#footnote-505). All the conditions attached to typical licenses under this regime point in the same direction. They promote, for example, cooperation between different licenses according to geology and at the same time promote competition in the marketplace. The liberal regime allowed for the efficient management of natural resources and the unhampered development of productivity, whilst the proprietorial fiscal regime is characterized by a positive marginal rent, a reservation ground rent, which puts a threshold on the flow of investment. Excess profits are taxed, and the investor seeks to make a reservation profit on top of which the State demands a reservation ground rent. Arising from the responsiveness of successive governments, the features of UK NSCS include clarity, predictability, and relative competitiveness.

The development of UK Petroleum Fiscal policy has had to remain flexible enough to address the reality of a harsh geological terrain and the changes in oil prices, but at the same time provide the industry with the necessary clarity and stability for future planning[[507]](#footnote-506). To sustain the objective of improving the UK public finance through sustained returns on investments, HM Treasury keenly engaged a wide range of stakeholders, including companies involved in the upstream supply chain, and providers of finance to the industry.

During this period, the Treasury worked closely with the Department of Energy and Climate Change (DECC) and HMRC on the question of how fiscal and regulatory regimes can best complement one another. The structured and responsive principle-driven design of oil and gas fiscal policy and taxation in the UK involves making judgements about the combination of tax measures that will achieve the right balance in meeting set economic objectives. A key consideration is the degree to which a lower effective tax rate (ETR) will incentivize investment in more challenging fields to increase production in the future. The advantage of the subsisting UK structured process of fiscal and economic policy articulation and legislation is that there is certainty and stability in the development of a progressive and competitive regulatory and tax legislative system for the profitable development and production of the UK North Sea and Continental Shell reserves, for the overall benefit of the UK economy.

In summary, the current fiscal and tax regime for the NSCS oil and gas exploration and extraction consists, in varying degree of importance, of three elements:

* Petroleum Revenue Tax (PRT) is a field-based tax charged on profits arising from individual oil fields. Effective 1 January 2016, PRT was permanently zero-rated rather than abolished to enable companies to continue to carry back losses[[508]](#footnote-507).
* Ring Fence Corporation Tax (RFCT) is the standard corporation tax applicable to all companies (subject to some important modifications e.g., relating to capital allowances) with the addition of a ‘ring fence’. The ring fence prevents taxable profits from oil and gas extraction in the UK NSCS being reduced by losses from other activities[[509]](#footnote-508) or by excessive interest payments[[510]](#footnote-509). From the 1 April 2008 the main rate of RFCT was fixed at 30%.
* Supplementary Charge (SC) is an additional charge originally set at 10% on a company’s ring fence profits excluding finance costs. The SC was introduced from 17 April 2002[[511]](#footnote-510) . The rate was increased to 20% for APs beginning on or after 1 January 2006 and 32% from 24 March 2011. The rate was then reduced back to 20% for APs beginning on or after 1 January 2015. The current rate, for APs beginning on or after 1 January 2016, is 10%.

In addition to the above taxes, a royalty[[512]](#footnote-511) was charged up to 31 December 2002, when it was abolished. It was levied at 12.5% of the gross value of oil and gas won in a particular licence area, less an allowance for the costs associated with the conveying, treating and initial storage of the oil and gas between the well head and the point of valuation, usually the terminal onshore.

Clarity of terms and predictability of the petroleum tax system has been enhanced by successive UK governments making the right judgement calls demanded by the economic circumstances of the UK and investors, which successive governments in Nigeria have failed to make on the petroleum industry in Nigeria, particularly with respect to the fiscal policy and tax law reform[[513]](#footnote-512).

* 1. **THE UK LEGISLATIVE PROCESS AND TAX LAW MAKING**

The UK is a parliamentary democracy with a bicameral legislature, made up of the House of Commons (HC) and the House of Lords (HL). HL is the second chamber of the UK Parliament. It works with the HC to make laws to check and challenge the actions of the Government and provide a forum of independent expertise. The HL Chamber spends about 60% of its time on legislation; the other 40% is spent on scrutiny, i.e., questioning Government and debating issues and policy[[514]](#footnote-513). However, the HL has limited or restricted tax legislative powers. The UK legislative process is also relatively straightforward[[515]](#footnote-514). Whilst HC has primacy over HL in taxation matters, the process that a bill goes through under normal circumstances is the same in both houses. A serial processing system of legislation is in place and the same bill goes through one Chamber of Parliament before then progressing through the other. A bill under normal circumstances must be agreed by both the HC and HL before it then goes on to receive Royal Assent. The exception to this is when the HC invokes the Parliament Act. This means that if the HC passes the same bill in consecutive parliamentary sessions, they can by-pass the HL by invoking the Parliament Act (for example, the HC did this with the Hunting Act in 2004)[[516]](#footnote-515).

The UK Acts of Parliament seek to capture the objectives and taxation principles clearly, and it is left to the administrators and courts to interpret these Acts and to provide much detail of the tax system. In addition, HMRC issues a variety of statements, notices and leaflets which explain how the law is implemented in practice. These statements are not law, and only explain the tax authorities' interpretation of the law. They are relied on unless successfully challenged in the courts. Moreover, the structured, regular, and effective engagement of the UK revenue with operators and the UK Oil Industry Taxation Committee (UKOITC) provides the platform for achieving better clarity and certainty, working closely with the Treasury.

The UK process is characterized by speed, and tax measures announced in March, for example, can be enacted as early as July. Each year the Chancellor of the Exchequer presents the Budget, which contains all the tax measures for the year ahead. The statutory provisions to give effect to these tax measures are set out in a single Bill: the annual Finance Bill.  It has been the practice in recent years for Chancellors to make tax announcements twice a year, using the Pre-Budget Report or Autumn Statement as a second fiscal event. In the Autumn Statement in November 2016, the then Chancellor Philip Hammond announced that from autumn 2017 the Government would present a single autumn Budget, to allow for greater Parliamentary scrutiny of Budget measures ahead of their implementation. He stated:

“Under the new cycle of a single fiscal event each year, most tax policies will continue to be developed through an established cycle, whereby a policy announcement at the Budget is followed by a policy consultation, the publication of draft legislation, and proposals are finally legislated in the next Finance Bill. However, to reflect the move of the Budget from spring to autumn, the timing of this cycle will change. Policies will be announced in the autumn and consulted on in winter and over the spring. Draft legislation will then be published in July for technical consultation ahead of the Finance Bill being introduced in the autumn.”[[517]](#footnote-516)

As with the UK, the Nigeria Federal system operates a bicameral legislature at the Federal level[[518]](#footnote-517), but a unicameral legislature at the federating States level. The comparison and the similarity end here, as the NA under the Nigerian 1999 Constitution specifically provides that legislative powers of the NA shall be exercised through bills that may originate from either of the houses of the NA. The scrutiny and responsiveness under the UK system, which ensures clarity of fiscal objectives, as well as the required alignment of the fiscal objective to the budgetary process, and speed as already highlighted above, is noticeably missing in Nigeria. Bills can only become laws when assented to by the President under the 1999 Nigerian Constitution or over-ridden by the veto of the NA[[519]](#footnote-518). Unlike in the UK, the Nigeria Budget, Finance and NA process lacks adequate reviews, established timelines, consultation and stakeholder engagement and transparency. The budget cycle in Nigeria can sometime drag on beyond the annual budget year and add generally to the fiscal and tax legislative uncertainty.

In the next section, we examine specific features of the UK fiscal, tax legislative process and practice that enhance and create clarity, certainty of terms, progressivity, and the predictability required in an otherwise complex oil and gas industry. These features of the UK NSCS tax regime can indeed be a model for achieving a simple, clear and certain terms and system of taxation in the Nigeria oil and gas industry which combines both the proprietorial and non-proprietorial aspects of ownership, control of operations, as well as encourage investment by operators whilst delivering profitable and fair economic returns to the resource owning country and the investors.

**7.4 ACHIEVING CERTAINTY AND STABILITY IN UK PETROLEUM TAXATION – A COMPARATIVE ASSESSMENT AND LESSONS FOR NIGERIA**

The foundations of the current UK fiscal regime were laid almost 100 years ago, and successive UK administrations have developed a fiscal regime which encourages companies to explore for and develop the nation’s oil and gas reserves whilst ensuring that an appropriate share of the benefits accrues to the UK economy. Despite the challenging North Sea environment, the uncertainties of the international oil market, the UK petroleum fiscal and legislative regime has kept pace and remained neutral and competitive. The UK Government commissions, and parliamentary interventions, ensured that the legislation, regulations, and agreements opened the way to the exploitation of the UK’s oil and gas reserves[[520]](#footnote-519). This provided the background to the development of the UK oil and gas royalty and subsequently the Ring-fenced Corporate Tax regime.

With the introduction of royalty at the rate of 12.5 percent in 1964, and the oil price increase of 1973, it became clear that the tax regime was inadequate to achieve the objective of securing a fair share of the rapidly escalating oil revenues for the UK. This was important not just in ensuring a future flow of tax receipts but wider economic benefits such as employment, skills, supply chain activity, exports, and security of energy supply. The benefits needed to be balanced against the risk of incurring deadweight costs from less economically challenging fields which would have still been commercially attractive at a higher tax rate.

The UK has in the last 40 years developed into one of the world’s major oil production countries, due to structured, timely and market responsive fiscal and tax system reviews. The UK petroleum fiscal regime is a trade-off between a simple regime which is easily understood by investors, but which fails to take account of the commercial challenges of individual fields, and a more tailored regime which seeks to match tax take to the profitability of fields, but at the cost of greater complexity. The changes introduced were in response to the wider UK fiscal position, such as the need to reduce the fiscal deficit[[521]](#footnote-520). The UK Treasury and Parliamentary system have consistently used the annual budget cycle to ensure the Finance Acts capture the tax legislation clearly, efficiently and in a timely manner.

In addition to the subsisting royalty charge of 12.5 percent, a new tax, PRT on cash flow, starting in 1975, was chosen as the preferred instrument for increasing the government share of the oil rents. Tax avoidance was curtailed by ring fencing field operations for corporate tax purposes. Subsequently, the PRT rates were increased significantly, rising to 75% in 1982. A Supplementary Petroleum Duty (SPD) was also introduced in response to dramatically high oil prices, but this was discontinued in 1982 in favour of the higher rate of PRT and the introduction of Advance PRT to accelerate its collection. For the next ten years, there was a progressive revision in the UK petroleum fiscal regime. This involved three (3) components:

1. Targeted reductions in royalty obligations.
2. A set of tax breaks which included breaching the original ring-fencing of PRT; and
3. Reduction of the rate of PRT and its partial abolition[[522]](#footnote-521).

In addition to these developments, there was also the reduction of the standard rate of CT from 52% in 1983, down to 33% in 1993. These deliberate policy steps, backed by legislation, ensured fair returns to both government and the investors, thus making the impact and direction clear to all stakeholders. The structured intervention and progressive review of the fiscal policy for the UK petroleum tax regime was accompanied by the overall effort of simplification of legislation by the Office of Tax Simplification and creating certainty in the system. The Nigeria fiscal and tax policy generally lacked this structured and responsive approach to reform a rather old petroleum tax system under the PPTA as amended by the PSC Act.

It has been argued that the phased removal of PRT, SPD and APRT duties defines the UK petroleum fiscal regime as a non-proprietorial regime[[523]](#footnote-522), but more importantly, the timely regular review of the UK oil and gas taxation regime has facilitated the streamlining the UK NSCS tax system for a challenging environment. regime. These developments keep the UK petroleum tax regime competitive. Also, the simplification of the tax system,[[524]](#footnote-523) though not fully achieved, may be said to proceed based on clear and well-defined fiscal and tax objectives and not just the simplification of legislative language. The consolidation of several earlier enactments, including the Petroleum and Submarine Pipelines Act 1975 and the Petroleum Act 1987 has resulted in the redrafting of certain provisions of the OTA and Petroleum Act 1998, to provide clarity. The most recent review concluded in 2023[[525]](#footnote-524), confirm policy decisions and principles for future policy making. The policy review supports investment through predictable and certain principles and terms for present operations and the support of investment which will inform the development of future tax response to price shocks.

Of particular importance is the legislation that determines the vesting of ownership of oil and gas rights within Great Britain and its territorial sea in the Crown. The grant of oil licences[[526]](#footnote-525) and the rules relating to submarine pipelines and the decommissioning of offshore installations have now been clarified to ensure a firm basis for licensing petroleum operations. The Public Accounts Committee (PAC) of the House of Lords had, in February of 1973, issued a report summarizing the discretionary licensing system that primarily had been used by the UK for the first four license rounds for the North Sea, but made no recommendation that the discretionary licensing system be changed to an auction system or that the 12.5 percent royalty rate associated with North Sea licenses be increased. The PAC, however reviewed the then existing U.K. corporation tax applicable to oil company profits earned from North Sea oil and gas operations and expressed a concern that the U.K. corporation tax was poorly structured in that petroleum companies could offset profits from North Sea oil and gas activity by losses from unrelated activities. The PAC consequently recommended legislative changes to the U.K. corporation tax to increase the effective U.K. tax rate on profits relating to North Sea oil and gas production.

With respect to vesting of ownership of oil and gas and the granting of licenses, the United States Tax Court in *Exxon Corp., et al. v. Commissioner for Taxes[[527]](#footnote-526)****,*** made useful findings of fact as to the rationale behind the UK natural resource ownership and licensing arrangement. The Court affirmed that with respect to the North Sea petroleum resources the licenses between the UK and Exxon were entered into in good faith. They were negotiated at arm's length and therefore constituted enforceable contracts under U.K. law. The Court observed that the purpose and objective of the UK in enacting the Ring Fence Corporation Tax and PRT were to accelerate tax revenues relating to development of North Sea petroleum resources and to tax extraordinary profits of oil and gas companies relating to the North Sea. It was also to make it more difficult for oil and gas companies to offset profits derived from the North Sea with losses and expenses from unrelated activities. The Ring Fence Tax[[528]](#footnote-527) was therefore enacted as a modified version of the U.K. corporation income tax and was made applicable to activity of oil and gas companies in the North Sea in lieu of the general provisions of the U.K. corporation tax generally applicable to U.K. corporate taxpayers. The US Court held that under its sovereign taxing power, the UK intended to and did impose PRT as a tax, not as payment for specific economic benefits.

There is therefore clarity with respect to ownership rights, licencing operations, and the field based PRT charged on profits from individual oil fields given development consent before 16 March 1993[[529]](#footnote-528). With the ring-fenced CT as well as the treatment of decommissioning costs, the UK NSCS fiscal and tax regime offers sufficient clarity to the taxpayer for planning, without depriving government of needed revenues, and guarantees fair returns to the companies and operators in the industry[[530]](#footnote-529), with minimal frictions[[531]](#footnote-530). The legislative changes and the reduction in rates and the introduction of new allowances without disrupting the existing CT regime and the overall UK tax system[[532]](#footnote-531)brought into clear focus the connection between production and prices. The changes and relaxation in the regime[[533]](#footnote-532) made it more likely for the development of marginal fields, whilst the cost of reducing the royalty generally was met by increasing the burden of tax on more profitable fields. The preciseness and the timing of these regulatory responses emphasized the need to achieve certainty and clarity in the fiscal regime and the tax legislation and regulations. The above stated initiatives and developments in the UK NSCS petroleum tax system clearly contrast with the general approach of the Nigeria FG in the ad hoc fiscal reviews and the introduction of gas fiscal incentives and the PSC fiscal arrangement[[534]](#footnote-533) into the existing tax and royalty fiscal JV regime under the PPTA.

The UK government also introduced several fiscal stimuli in the period 1983[[535]](#footnote-534)to 1999[[536]](#footnote-535), which resulted in an oil production increase of 37% and gas production by 50%, even against the backdrop of low oil prices. The introduction of 100% investment allowance for both the standard CT and the SC created an environment for smaller companies entering the UKCS and incurring losses during the early stages of development, as Ring Fence Expenditure Supplement (RFES)[[537]](#footnote-536) was introduced to help retain the value of losses incurred until they can be set off against profits, by allowing an uplift of 10%[[538]](#footnote-537) per annum, up to a maximum of six accounting periods offshore and 10 accounting periods onshore. To further achieve clarity and certainty, the Finance Act 2012 introduced a restriction of the relief available in respect of decommissioning expenditure, as well as other reliefs affecting SC.[[539]](#footnote-538)

The Nigeria petroleum fiscal, tax and regulatory system and process has lacked for a long time the focus and direction, as well as the structure and the mechanism for a coordinated response approach to changes in major cost heads of operations, or the treatment of major expenditure in the era of oil price changes in the international market, as no significant changes were made to the PPTA regime for many years, until the PSC arrangement was introduced for deep offshore and inland basin petroleum operations. With respect to granting reliefs and allowances, or making appropriate structural changes to the upstream fiscal and tax regime, this did not take place until the grant of fiscal incentives and the reduced tax rate for PSC operations in the deep offshore and inland basins in the early 1990’s. As discussed in chapters 4 and 5 respectively, the approach adopted, and nature of the PSC fiscal incentives introduced by the PSC Act, which amended the PPTA, rather than make the PPTA regime competitive or neutral as perhaps envisaged, appeared to create gaps and distortions in the PPT upstream petroleum tax system[[540]](#footnote-539).

With respect to interpretation and enhancing understanding and compliance in the UK petroleum fiscal regime and tax legislation, the UK court system has played a significant role in achieving certainty in the petroleum tax system, as much as the legislative and fiscal changes in UK tax system. On the matter of the liability for decommissioning costs, the court provided clarity in the case of *Apache UK Investment Limited v Esso Exploration and Production UK Limited [[541]](#footnote-540).*The court affirmed that the decommissioning provisions in the Act are drafted widely, to protect the UK Government from being left to carry the burden of decommissioning costs*.* The court also confirmed that a former licensee will not be liable for the decommissioning of wells drilled after the licensee ceased to be the owner of the relevant oil and gas assets. The background to this matter was that in 2011, Apache UK Investment Limited (Apache) acquired some North Sea oil and gas assets from Esso Exploration and Production UK Limited (Esso) under a Sale and Purchase Agreement (SPA). The parties entered into a series of bilateral Decommissioning Security Agreements (DSAs), as part of Esso’s sale to Apache of a subsidiary that held licences in several oil fields in the North Sea. The DSAs provided security for Apache’s obligation under the SPA to indemnify Esso for decommissioning obligations that Esso could be liable for. It was common practice for such DSAs to provide that the operator/licensee will prepare a “proposed plan” for each year setting out details such as an estimate of the dates on which the decommissioning will commence and an estimate of the likely decommissioning costs. The proposed plan is then used to calculate the amount of security to be provided by the relevant parties. The dispute in this case concerned the amount of security to be provided by Apache in respect of the decommissioning obligations. The issue of Esso’s potential exposure under the Act assumed relevance because the higher that exposure, the higher the security that Apache had to provide. The Offshore Petroleum Regulator had weighed in with the view that Esso could be liable under the Act for certain wells drilled after its sale of the fields to Apache. The court was of the view that the Act was drafted widely, to protect the UK Government from being left to carry the burden of decommissioning costs. This observation reinforces the importance of clarity in drafting to clearly establish a tax charge obligation, as the tax provision must be read and interpreted literally. It emphasizes the point that guidance from a regulator will not be determinative of interpretation issues arising under statute, as this remains, rightly, the province of the courts[[542]](#footnote-541). This judgement further highlights how uncertainties can arise even in comprehensively drafted agreements or legislation[[543]](#footnote-542). This further underscore the importance of the clarity of provisions and definitions and the proper application of concepts and taxing principles as these are essential and critical to achieving certainty. It also emphasizes the need for open, ruled-based drafting of tax legislation. It is indeed a reminder for clear drafting and consistent interpretation by the tribunal and courts of regulatory and legislative provisions.

In another respect, the UK Parliamentary Hansard debates, reports provide the background materials on substantive and subsidiary legislations and regulations in the general and petroleum legislative and tax regime. The Nigerian NA as an evolving legislature lacks the apparatus and requisite competence, even in its committee oversight role to provide the needed support to achieve legislative speed and clarity to matters affecting the petroleum industry. The absence of responsive and progressive reform of the primary and related subsidiary legislations and regulations in the Nigerian petroleum industry have indeed contributed to the delay in the reviews and the enactment of the PIA.[[544]](#footnote-543)

**CONCLUSION**

Right from the inception of the UK petroleum industry, it has been driven by clearly defined fiscal and tax objectives. Successive governments have ensured that the budgetary and legislative processes are aligned to achieve the economic goals of the country, whilst remaining competitive in an international industry with its high technology content and capital requirement. This approach has defined the development of the complex UK field-based upstream petroleum tax system, comprising of ring-fenced corporation tax, the supplementary charge and the PRT, which is now zero rated for all new fields effective January 2016. The UK tax system is responsive enough to cater for the revenue needs of the government and the profitability of the operators. Clarity of terms and the certainty in the processes for change and regular review by the Chancellor and the efficient parliamentary process have all enhanced understanding, certainty, and compliance, which unfortunately, the Nigeria petroleum tax regime lacks. The UK petroleum tax legislative system has had well defined fiscal and tax objectives at every phase and stage of its evolution. Successive UK governments have regularly reviewed the system to keep abreast of the changes in the petroleum industry, especially the oil price changes and the need to ensure fair return on revenues to government[[545]](#footnote-544) and the investing companies. The several legislative and other fiscal review and reform initiatives in the UK petroleum and general tax systems are progressive, with the objective of achieving clarity and certainty in terms and language of statutes. The UK initiative at tax statute simplification and the "Tax Law Rewrite" project established in 1996 with the aim of rewriting UK tax legislation in such a way that it is clearer and easier to use has contributed to achieving enhanced understanding and compliance which may be recommended for the Nigerian petroleum tax system, and the tax system as a whole[[546]](#footnote-545). The yearly FAs also enhance certainty and compliance with legislation.

**CHAPTER 8**

**TAX AND FISCAL POLICY AND TAX LAW MAKING IN THE CANADIAN PETROLEUM INDUSTRY – A COMPARATIVE REVIEW**

**8.0 INTRODUCTION**

Canada, our second comparator country, operates a federal system like Nigeria. However, unlike Nigeria, the Canadian federal system has strong regional or provincial elements. Canada also, like Nigeria, has a viable energy industry with "significant resources of conventional and unconventional oil, natural gas and hydroelectricity".[[547]](#footnote-546) The Canadian oil and gas industry is critically important to Canada’s economy and has a long history. It accounts for about 8 percent of Canada’s GDP, as well as for a significant share of the tax revenue collected by the government. The petroleum industry is particularly important to the provincial economies of Alberta and Saskatchewan. It contributes 30 percent of Alberta’s GDP and slightly more than 23 percent of Saskatchewan’s GDP.[[548]](#footnote-547)

The Canadian petroleum industry developed in parallel with that of the United States. The first oil well in Canada was dug by hand (rather than drilled) in 1858 by [James Miller Williams](https://en.wikipedia.org/wiki/James_Miller_Williams" \o "James Miller Williams) near his asphalt plant at [Oil Springs, Ontario](https://en.wikipedia.org/wiki/Oil_Springs,_Ontario" \o "Oil Springs, Ontario). At a depth of 4.26 meters (14.0 ft)[[549]](#footnote-548) he struck oil, one year before "Colonel" [Edwin Drake](https://en.wikipedia.org/wiki/Edwin_Drake" \o "Edwin Drake) drilled the first oil well in the United States.[[550]](#footnote-549) Williams later went on to establish “The Canadian Oil Company" which qualified as the world’s first [integrated oil company](https://en.wikipedia.org/wiki/Vertical_integration" \o "Vertical integration). [Canada](https://en.wikipedia.org/wiki/Canada" \o "Canada) has the third largest [oil reserves](https://en.wikipedia.org/wiki/List_of_countries_by_proven_oil_reserves" \o "List of countries by proven oil reserves) in the world and is the world's fourth largest [oil producer](https://en.wikipedia.org/wiki/List_of_countries_by_oil_production" \o "List of countries by oil production) and fourth largest [oil exporter](https://en.wikipedia.org/wiki/List_of_countries_by_oil_exports" \o "List of countries by oil exports). Approximately 97% of Canadian oil production occurs in three provinces: [Alberta](https://en.wikipedia.org/wiki/Alberta" \o "Alberta), [Saskatchewan](https://en.wikipedia.org/wiki/Saskatchewan" \o "Saskatchewan), and [Newfoundland and Labrador](https://en.wikipedia.org/wiki/Newfoundland_and_Labrador" \o "Newfoundland and Labrador). In 2015 Alberta produced 79.2% of Canada's oil, Saskatchewan 13.5%, and the province of Newfoundland and Labrador 4.4%. [British Columbia](https://en.wikipedia.org/wiki/British_Columbia" \o "British Columbia) and [Manitoba](https://en.wikipedia.org/wiki/Manitoba" \o "Manitoba) produced about 1% apiece. The four [Western Canada](https://en.wikipedia.org/wiki/Western_Canada" \o "Western Canada) provinces of Alberta, British Columbia, Saskatchewan and Manitoba all produce their oil from the vast oil rich [Western Canadian Sedimentary Basin](https://en.wikipedia.org/wiki/Western_Canadian_Sedimentary_Basin" \o "Western Canadian Sedimentary Basin), which is centered on Alberta but extends into the other three Western provinces and into the [Northwest Territories](https://en.wikipedia.org/wiki/Northwest_Territories" \o "Northwest Territories). The province of Newfoundland and Labrador produce its oil from [offshore drilling](https://en.wikipedia.org/wiki/Offshore_drilling" \o "Offshore drilling) on the [Grand Banks of Newfoundland](https://en.wikipedia.org/wiki/Grand_Banks_of_Newfoundland" \o "Grand Banks of Newfoundland) in the western [Atlantic Ocean](https://en.wikipedia.org/wiki/Atlantic_Ocean" \o "Atlantic Ocean)[[551]](#footnote-550). In 2019 it produced an average of 750,000 cubic metres per day (4.7 Mbbl/d) of [crude oil](https://en.wikipedia.org/wiki/Crude_oil" \o "Crude oil) and equivalent. Of that amount, 64% was upgraded and non-upgraded bitumen from [oil sands](https://en.wikipedia.org/wiki/Oil_sands" \o "Oil sands), and the remainder [light crude oil](https://en.wikipedia.org/wiki/Light_crude_oil" \o "Light crude oil), [heavy crude oil](https://en.wikipedia.org/wiki/Heavy_crude_oil" \o "Heavy crude oil) and [natural-gas condensate](https://en.wikipedia.org/wiki/Natural-gas_condensate" \o "Natural-gas condensate)[[552]](#footnote-551). Most of Canadian petroleum production is exported. Approximately 600,000 cubic metres per day (3.8 Mbbl/d) in 2019, with 98% of the exports going to the United States[[553]](#footnote-552).

According to the Natural Resources Canada 2006 Report on legal and policy frameworks on energy in North America, jurisdiction over energy is divided between the [federal](https://en.wikipedia.org/wiki/Government_of_Canada" \o "Government of Canada),  [provincial and territorial governments](https://en.wikipedia.org/wiki/Provinces_and_territories_of_Canada" \o "Provinces and territories of Canada). The Canadian federal Constitution is also clear on the ownership rights and jurisdiction over natural resources exploitation and production in Canada. Unlike the case in Nigeria, the provincial governments (PG) have jurisdiction over the exploration, development, conservation, and management of [non-renewable resources](https://en.wikipedia.org/wiki/Non-renewable_resources" \o "Non-renewable resources), as well as the generation and production of [electricity](https://en.wikipedia.org/wiki/Electricity" \o "Electricity). Federal jurisdiction in energy is primarily concerned with regulation of inter-provincial and [international trade](https://en.wikipedia.org/wiki/International_trade" \o "International trade) and commerce, and the management of non-renewable resources on [federal lands](https://en.wikipedia.org/wiki/Federal_lands" \o "Federal lands)[[554]](#footnote-553).

Another major difference with respect to ownership and operation of the petroleum industry in both countries, is that whilst the Nigerian State owns and has exclusive fiscal control, legislative and taxing rights over natural resources, the reverse is the case with Canada. The PG in Canada own the natural resources and have fiscal and taxing rights over the non-renewable natural resources in the provinces. The PG therefore carry out the exploration, production, and regulate the taxation of these resources, without interference from the CG or the territories in the Canadian federation. The vertical imbalance in Nigeria which created overlaps and conflicts in revenue capture resulting in the incidence of multiple taxation in Nigeria and areas of ambiguity in taxation is avoided in Canada. Also, unlike in Nigeria, where the Nigerian State awards licenses and operates through the NNPC, as regulator and operator in petroleum operations[[555]](#footnote-554), the situation is totally different in the Canadian federation. This makes for clear separation of responsibilities, administration, and the fiscal policy and regulatory framework for taxation of natural resources between the CG and the PG’s.

According to a 2015 [Canadian Global Affairs Institute](https://en.wikipedia.org/wiki/Canadian_Global_Affairs_Institute" \o "Canadian Global Affairs Institute) (CGAI), report, the design and structure of [Canadian federalism](https://en.wikipedia.org/wiki/Canadian_federalism" \o "Canadian federalism) has resulted in an "unwillingness of the Canadian CG to commit to a national vision in most resource issues for fear of risking political capital in debates with those provinces who resist cooperative resource development”.[[556]](#footnote-555) Canada was one of the few OECD countries that did not have a national energy policy and it has been maintained that Canada has one of the most divided and decentralized constitutional arrangements for energy among Western industrialized countries[[557]](#footnote-556). Consequently, Canada's "unique" political and economic reality affects its federal and provincial energy strategies, as the [Constitution of Canada](https://en.wikipedia.org/wiki/Constitution_of_Canada" \o "Constitution of Canada) places natural resources under the [jurisdiction of the provinces](https://en.wikipedia.org/wiki/Canadian_federalism" \o "Canadian federalism)[[558]](#footnote-557). However, the three [Prairie provinces](https://en.wikipedia.org/wiki/Prairie_provinces" \o "Prairie provinces) of Canada originally did not control the natural resources in the provinces as a condition of their entry into the Confederation, until the [Natural Resources Acts](https://en.wikipedia.org/wiki/Natural_Resources_Acts" \o "Natural Resources Acts) of 1930.

The Canadian CG coordinates its energy policies with those of the PG, which own most of the petroleum, natural gas and coal reserves, and control most of the electricity production[[559]](#footnote-558). The CG also has the responsibility over infrastructure between provinces, which includes pipelines Intergovernmental conflicts sometimes arise from this structure of ownership and governance. The problem is particularly acute since the energy consuming provinces have the bulk of the population and can elect the CG which introduces policies favouring energy consumers, while the energy producing provinces can defeat such policies by exercising their constitutional authority over natural resources. Unlike the case in Canada, the federating States in Nigeria are constitutionally unable to directly influence the design and formulation of fiscal or tax policies affecting the petroleum or energy sector operations in Nigeria.

Further, unlike in the Canadian federation, where taxation of income and profits from petroleum is the prerogative of the PG, the exclusive prerogative for taxation of income, profits and gains from petroleum resides with the FG under the Nigerian Constitution. As discussed in chapters 3 and 5 respectively of the thesis, the centralization or commanding control, ownership, and taxation of petroleum operations by the FG under the Nigeria Constitution, has not always translated into effective formulation of petroleum fiscal or tax policy, or the reform and development of legislation and regulation of the industry. Also, unlike the case in Canada and the UK, with proactive policy development in world energy environment and pricing changes, the Nigerian petroleum policy and legislative environment has failed to keep pace with developments in world energy and pricing changes.

An analysis conducted in 2013 of the Canadian energy and climate policies has shown that there is a lack of consistency between the CG and the regional provincial (PG) strategies[[560]](#footnote-559). The lack of consistency was attributed to the economic and environmental realities, and the diversity of energy sources and energy demands that vary greatly among the Canadian provinces. As a result of the differing energy characteristics of the provinces there has been the creation of multiple federal and provincial strategies, sometimes complementary, but often contradictory. It therefore offers useful comparisons and learnings for the policy and tax law development in the Nigerian upstream petroleum policy and tax system reform.

**8.1 THE ENERGY AND TAX POLICY FRAMEWORK IN CANADA**

Canadian energy policy[[561]](#footnote-560) is based on three important principles, which also affect the taxation outcomes. These are:

(i) competitive markets to ensure a successful and innovative energy system capable of meeting Canadian energy needs,

(ii) respect for the jurisdiction of provinces and the central government, and

(iii) targeted central or federal interventions in the energy trading process ensuring that specific energy policy objectives are achieved[[562]](#footnote-561).

To improve the coherence of provincial and federal policies, a combination of policy tools has been instituted to facilitate collaboration between the CG and PG in Canada. These policy tools have resulted in equal balance of CG and PG in Canada, in the creation of energy policies. The CG is responsible for establishing objectives for the entire country and the PGs are responsible for enforcing these objectives and developing the methods to achieve the alignment of goals[[563]](#footnote-562). This alignment of energy policy between the CG and the PG, in the context of a very decentralised constitutional framework, is in direct contrast to the case under the Nigerian 1999 Constitution where the fiscal and legislative responsibility of designing and enforcing the energy taxation regulation rests solely on the FG of Nigeria.

The Tax Policy Branch (TPB) of Canada’s Department of Finance (CDF) is responsible for the design, development, and translation of tax policy at the CG level into legislation. TPB personnel conduct internal research and analysis (for example, conducting economic analysis and reviewing case law) to generate ideas for tax initiatives and to analyze ideas for tax changes from other sources. The Canada Revenue Agency (CRA), which administers most federal taxes, is an important source of ideas for tax initiatives. In addition, TPB personnel are in regular contact with other branches of the CDF, other federal departments, and representatives of provincial and territorial governments[[564]](#footnote-563). The conduct of internal research and analysis to generate ideas for tax initiatives and to analyze ideas for tax changes from other sources is critical to building a robust, responsive, and stable tax system. This has long been missing with respect to the Nigeria petroleum sector as NNPC, MPR and the MOF, as well as the FIRS, appear to either lack capacity, or work in silos, or at best in an uncoordinated manner. As such, the command and control of fiscal powers by the FG under the 1999 Constitution has not, until recently always produced any sustained fiscal and tax policy and law reform or change in the Nigeria O & G industry.

The TPB of the CDF is made up of five divisions: Personal Income Tax; Sales & Excise Tax; Business Income Tax; Tax Legislation; and Intergovernmental Tax Policy, Evaluation and Research. All, except the Tax Legislation Division (TLD), carry out quantitative and qualitative economic research and analysis regarding contemplated policy options. Members of the TLD and the Sales & Excise Tax Division review case law and commentary published by practitioners and academics. TPB staff review submissions by taxpayers, practitioners, and expert committees such as the CBA-CPA joint committee. The research undertaken depends on the nature of the issue. The CRA has developed a large database using data from taxpayers’ return information.[[565]](#footnote-564). The product of the analysis and reviews and commentaries get fed into the annual budget making and tax law changes and amendment in Canada.

Also, as is the case with the UK, the annual Canadian federal budget is the major vehicle for the introduction of new fiscal or tax policy initiatives[[566]](#footnote-565). The budget is a blueprint for how the Government wants to set the annual economic agenda for Canada. It is the job of the CDF to prepare it. The budget, usually tabled early in the year, is generally preceded in the fall by another major statement, the Economic and Fiscal Update. Accordingly, the policy options analysis process normally tracks the annual budget cycle. Options are analyzed in anticipation of their potential acceptance as measures to be adopted in the budget. For measures considered for inclusion in the budget, the legislative feasibility of various policy options, their consistency with the government’s priorities and with tax policy objectives (fairness, neutrality, simplicity, etc.), the economic and distributional impacts, the cost/revenue impact, potential provincial/territorial impacts, and other considerations are all reviewed[[567]](#footnote-566). In addition, all tax measures are reviewed for their gender and environmental impact. This is done by way of preparing a briefing package for consideration for ministerial approval. Similar analysis is conducted for potential tax changes considered outside the budget cycle.

The following strengths of the Canadian tax policy and law-making process[[568]](#footnote-567) would be good learning and practice for the Nigeria petroleum industry:

1. The drafting of tax legislation is an integral part of the tax policy process. This is critical for achieving clarity of objectives, speed of delivery and certainty of tax terms.
2. The centralization of the tax policy function in the CDF means that accountability is clear and provides “one-stop shopping” for stakeholders.
3. The relationship between CDF and the tax community is generally good.
4. The staff of the CDF are both motivated and dedicated to contributing to the tax policy process.

The CDF and TPB are responsible for the process of coordinating the design, formulation of policy and drafting of legislation. This framework ensures the non-interference or overlap of legislative and taxing functions of the PG and the CG. In the case of Nigeria, the coordination of the relevant agencies and departments has not always worked well or yielded the desired results in policy design, and the timely drafting of clear tax legislation for the Nigerian petroleum industry.

**8.2 FISCAL POLICY AND TAX LAW MAKING IN THE CANADIAN PETROLEUM INDUSTRY:**

Canada has undertaken bold and far-sighted periods of fiscal policy innovation[[569]](#footnote-568), implementing significant, but less than universally popular policies that addressed several important fiscal concerns for the petroleum industry. Many of the policies necessarily involved provincial legislation and programs and were initiated at the provincial level, with the CG playing a leadership role in encouraging the harmonized participation of all provinces[[570]](#footnote-569). The bold and farsighted fiscal policy reforms had the objective of developing an orderly, neutral, and progressive tax system. However, the Canadian decentralized federal structure and the provincial ownership of resources was a source of two problems. One is the enormous horizontal fiscal imbalance that results from resource-rich provinces having greater ability to provide basic public services than non-resource-rich provinces[[571]](#footnote-570), and the second is the equalization system, designed to offset the effects of the horizontal imbalances arising from the limited access by the CG to natural-resource revenues.

The ultimate objective of the fundamental changes in Canada’s fiscal policy and legislative systems has been to create a politically and economically robust taxation system[[572]](#footnote-571) in world market conditions. Against this background, the Canadian Royal Commission's[[573]](#footnote-572) general approach to the reform of the taxation of income from businesses was to treat all industries and types of organization as equally as possible[[574]](#footnote-573). Indeed, one of the strengths of this approach to reform the system is that its principles can be generally applied, without the need for a separate rationale and separate provisions for each industry, type of organization, and class of income[[575]](#footnote-574), whilst still maintaining the distinct interest and peculiarities of the PGs who own and tax the natural resources.

Following extensive discussions and studies,[[576]](#footnote-575) the Royal Commission took the view that the possibilities for the spreading and diversification of risks were as great in the mining and petroleum industries as elsewhere in the economy, and that any tax-based disincentives to risk-taking should be addressed in a way that is equally applicable to all industries and types of organization. In particular, the Commission argued that if all gains were fully and equally taxable, and all losses fully and immediately deductible, "there would be little need for any special concessions to the mining and petroleum industries even if it was felt that they were characterized by greater risk than other industries."[[577]](#footnote-576) In view of the above and the existence of similar incentives in the United States, and the special role of energy in economic development, the Commission concluded that:

“The need for special encouragement to mineral and petroleum exploration to compensate for a capital market bias against risky ventures is small, if it exists at all. We are also convinced that there are fiscal methods available that would be as efficient as, or more efficient than, tax concessions in encouraging exploration if this was deemed to be in the public interest’’[[578]](#footnote-577)

The Commissions broad objectives were aimed at achieving horizontal and vertical equity, efficiency in resource allocation, full employment without inflation, and “a free society and a strong, independent federation.”[[579]](#footnote-578) The Commission’s Report also noted that efficiency in resource allocation demands that taxes be neutral with respect to choices among investment opportunities, forms of business organization, inputs used in production, and debt and equity financing. Non-neutrality may be called for if non-tax forces give rise to imperfections in markets, but the Commission, quite properly, assumed that such sources of deviation from efficiency lie beyond its purview and that the design of rational tax policy should proceed as though they did not exist.

In the four years between the release of the Royal Commission's Reportin late 1966 and the introduction of a White Paper and Bill[[580]](#footnote-579) embodying tax reform, there were many changes made to the proposals. Responding to a combination of pressures from the extractive industries and the governments of resource-rich provinces, the Benson *White Paper[[581]](#footnote-580)* recognized:

‘That the exploration for and development of mineral deposits continue to provide special benefits to Canada and to various provinces by creating or maintaining highly productive industry in areas other than those where rapid urban and industrial growth are already occurring.... Just as scientific research and development are believed to warrant some special public support, the government feels that exploration for and development of minerals still warrant some support in a form more directly related to this activity than has been the case with past depletion. It is believed that support on a less-generous scale should suffice for this purpose[[582]](#footnote-581).

The proposals contained in the *Benson White Paper* can be summarized as follows:

1. To retain immediate deductibility for all exploration and development expenses against all income for those principally involved in resource extraction, and against resource income for others.

2. To retain full deductibility of the costs of acquiring mineral properties (subject to the same "principal business" tests as for exploration and development), but to treat gains from the sale of such properties as capital gains, and hence taxable, under the *White Paper's* general proposals for capital gains, at 50 percent of their actual value.

3. For operators, the 33 1/3 percent depletion allowance would be retained, but only if firms "earned" the rights to the allowance by capital expenditures of $3 for every $1 of depletion allowance claimed.

4. Percentage depletion for non-operators would be repealed.

In all major respects, the *White Paper* proposals treated oil and gas production revenues more generously than did those of the Royal Commission, but they too came under pressure from the extractive industries, especially before hearings held by Committees of the Senate and the House of Commons. During the many briefs and scores of meetings on tax reform, the Commons Finance Committee heard, once again, the arguments favouring special incentives for the extractive industries, and phrased their resulting dilemma as follows:

"Is Canada prepared to suffer the possibility of a reduction in the growth and development of its natural resource industries in exchange for the longer-term benefits of a more neutral and equitable tax system?"[[583]](#footnote-582)

These foregoing developments therefore helped to shape corporate taxation generally and petroleum taxation at the PG and CG levels in Canada, particularly. By the early 1980s, when the federal taxes on oil and gas production were at their greatest, the equal tax treatment fought for by the industry in the aftermath of the Royal Commission looked attractive. By the end of 1986, with a clear focus on maintaining neutrality, equity and simplicity and to integrate the income tax system, almost all the special federal taxes applicable to oil and gas revenues had been removed[[584]](#footnote-583), and the industry was asking for the reintroduction of a broadly based, earned depletion allowance as a means of helping firms hard hit by the 1985-86 fall of world oil prices. Furthermore, changing tax policies impose a political cost that is difficult to quantify, especially in an environment of uncertain and highly variable prices. Moreover, from the point of view of the political volatility of the system imposing a real cost, the efforts of each taxpayer group to increase its own benefits require real resources and offers the prospect of a tax system that has substantial non-neutralities that lower the efficiency with which the nation's resources are allocated among alternative industries and activities. Also, the oil and gas taxation systems designed and applied in an environment of low oil price of $3 per barrel will not be sustainable, as much as the systems designed and applied with oil at US $30 per barrel will require changes when oil prices drop to US$10 or US$15per barrel.

In the following section, we examine the process for tax law making in the Canada oil and gas industry, and how the fiscal and tax policy clarity and direction provided by the Carter Commission and Benson White paper reports and recommendations etc. have contributed to achieving certainty, predictability and competitiveness of the petroleum tax system of Canada.

**8.3 PETROLEUM OPERATIONS LEGISLATION, REGULATIONS AND TAXATION**

The Canadian Constitution Act, 1867 provides that “Bills for appropriating any part of the public revenue, or for imposing any Tax or Impost, shall originate in the House of Commons”[[585]](#footnote-584), a requirement echoed in the Standing Orders of the House of Commons*[[586]](#footnote-585)*. The CG coordinates the legislative and regulatory process and owns the major infrastructures, whilst the PG’s own, operate, legislate, and regulate the provincial petroleum activities. The 1867 Constitution restricts PG taxing powers to direct taxation within a province. Only the CG can impose indirect taxes (such as import duties). This essentially minimizes the incidence of conflicting double or multiple tax incidence on the same assets, or income tax base, as is the case in Nigeria upstream petroleum taxation.

The CG and PG Legislatures have jurisdiction to levy taxes on personal and corporate income as well as impose sales taxes and enact their respective territorial or provincial laws[[587]](#footnote-586). The series of federal legislative and tax changes initiated in the 1970s[[588]](#footnote-587) and early 1980s[[589]](#footnote-588)altered the federal tax treatment of oil and gas revenues so markedly and informed a need for a general reform, guided by goals, such as fair distribution of the tax burden based upon ability to pay; steady economic growth and continuing prosperity; voluntary compliance with tax laws, combined with enough detail to block loopholes; and, finally, a system that can be used by the provinces as well as Canada.

The established process is that the Department of Justice (DOJ) in Canada prepares government bills for introduction in Parliament whilst tax legislation is normally tabled in Parliament by the MOF[[590]](#footnote-589). There is adequate stakeholder involvement, thus enhancing understanding and proper articulation and processing of the fiscal and tax objectives for the petroleum industry. The process is transparent and well-coordinated between the CG and the PG. It is decentralized with well-defined areas of responsibility, unlike the case in Nigeria with a centralized FG ownership, and sole fiscal responsibility[[591]](#footnote-590). The federal tax structure is kept as nearly equal as possible between industries, with the stabilizing features of the tax and royalty system designed and implemented by the PG. On the one hand, inter-regional competition results in inter-regional variations in tax and activity levels posing political and efficiency problems.

The legislative and regulatory framework follow the constitutionally recognized ownership rights and legislative responsibilities of the CG and PGs, and the need to maintain the separation of provincial and central government rights and roles for corporate income and indirect tax legislation and administration. The CG’s ownership rights are made up of oil and gas rights in Canada’s national parks and indigenous lands. These are governed by the Canada Petroleum Resources Act[[592]](#footnote-591) and the Canada Oil and Gas Operations Act[[593]](#footnote-592).  Provincially owned oil and gas rights are governed by each province’s legislation. Some oil and gas rights are freehold mineral rights.  For example, in the province of Alberta, approximately 8% of Alberta’s oil and gas rights are privately owned, 81% are owned by the PG and the remaining portion is owned by the CG[[594]](#footnote-593).  Of the freehold mineral rights, 90% are held by corporations or trusts.  Companies can obtain the right to explore, drill and produce oil and natural gas from private landowners by way of a privately negotiated oil and gas lease[[595]](#footnote-594) Consequently, the regulation of the extraction of oil and gas varies depending on the jurisdiction and nature of the development.

Offshore production is regulated under the National Energy Board (NEB) Act, the Energy Safety and Security Act, the Canada Oil and Gas Operations Act, Canada Petroleum Resources Act. Other regulatory Acts include the Canada-Newfoundland Atlantic Accord Implementation Act, and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act.

The license to operate, the oil and natural gas rights owned by the CG and PG, as well as private individuals, are typically conveyed by private contract to participants or operators. Once a licence or lease is issued, a participant is entitled to explore for, develop and produce oil and/or natural gas in accordance with the terms of the licence or lease.  At the end of the term, or upon termination of the licence or lease, the rights granted to the participant will revert to the owner who issued the licence or lease[[596]](#footnote-595).

Resident corporations are taxed on worldwide income, subject to certain credits. Non-resident corporations are generally subject to tax only on Canadian-sourced business income. Payments received from oil and gas production are taxed as income both federally and provincially[[597]](#footnote-596) and expenses incurred in exploring, developing, or acquiring oil and gas properties can be deducted from the income. These deductions are accomplished through tax pools available under the Federal Income Tax Act[[598]](#footnote-597).

Each province has a further tax regime which can include a freehold mineral tax, lease rentals and royalties[[599]](#footnote-598). The CG and PG’s have also enacted legislation and regulations to govern the abandonment and reclamation of lands subject to oil and natural gas development.  The regulations are normally drafted with two overarching objectives: prescriptive and goal setting, with clearly defined boundaries for the CG and PG’s. Both technical and non-technical decommissioning aspects appear to attract increasing attention from governments. The areas of interest are in situ decommissioning, work optimisation, liability transfer mechanisms and waste movement. A recent study of the Canadian oil and gas industry abandonment and decommissioning approach[[600]](#footnote-599) shows that companies are failing to make plans to pay for $72 billion in future decommissioning liabilities for oil and gas wells, pipelines, and facilities. Studies also show that the cleanup liabilities, collectively referred to as asset retirement obligations (AROs), are likely to result in future corporate defaults, leaving the Canadian taxpayer to pay to resolve the mess[[601]](#footnote-600).

In addition to the above key fiscal and legislative features which make for clarity and certainty, we examine in the section below specific features of the oil and gas tax system that enhance and achieve more clarity, predictability, certainty and progressivity in oil and gas taxation in Canada, and relevant lessons for upstream petroleum taxation in Nigeria.

**8.4. ACHIEVING CERTAINTY IN CANADIAN PETROLEUM TAXATION – A COMPARATIVE REVIEW AND LESSONS FOR NIGERIA’S UPSTREAM PETROLEUM TAXATION**

The main thrust of the fiscal and tax policy and legislative reviews and reforms under the many Royal Commission's study and White paper reports was the attempt to equalize taxes in the petroleum industry with the general levels applicable to the rest of the business sector[[602]](#footnote-601). The focus of the exhaustive reviews was to simplify and equalize the system, whilst remaining responsive, progressive, predictable and competitive.

In many respects, Canada’s tax environment can be said to be favorable to oil and gas activities. The CG, the PG, and the territories each levy income taxes on corporations and individuals in their separate jurisdictions.[[603]](#footnote-602) Moreover, since the governments of the oil-rich provinces are responsible for the royalty administration as well as the corporate income tax on petroleum, there is the incentive to be competitive and to ensure clarity and precision in the imposition and the tax obligation. This is not the case in Nigeria, where the FG owns, controls, regulates, and taxes petroleum operations to the exclusion of the federating States, where the resources are found.

The Canadian petroleum tax regime provides for the special treatment of; (i) exploration and development; (ii) production; (iii) processing (including separating and refining); and (iv) decommissioning, as well as deductions, allowances and credits which may be claimed either in the year of expenditure or, sometimes, in a prior or subsequent year.[[604]](#footnote-603) The income tax rate is relatively low. There is also provision for rapid write-off of intangible expenses and the cost of tangible assets which permits taxpayers to recover the costs of bringing a well into production before they must pay any tax.

A flow-through share mechanism allows corporations to renounce intangible expenses to investors. This allows corporations to monetize expenses that they are unable to utilize in the foreseeable future. There is also hardly any confusion or competition between the CG and PG’s as to their fiscal and taxing responsibilities under the Canadian Federal Constitution. Also, the powers of the taxing agencies are clearly delineated, and this makes for better tax management in the tax system.

In addition to the above stated features of the Canadian petroleum taxation regime, it has the incentive to be competitive over its neighbor, the US, and tax deductions for intangible expenses can be carried forward indefinitely, whilst operating losses can be carried forward for as long as 20 years. This makes it almost certain that a taxpayer who does develop viable oil and gas operations will be able to use start-up losses. Only one-half of a capital gain is included in income and most capital taxes have either been eliminated or are being phased out in most jurisdictions in Canada.

The US tax reforms of 2017[[605]](#footnote-604) further necessitated that Canada responds quickly to remain competitive. The broad overhaul of the US corporate tax system, including a large reduction in the corporate tax rate from 34 to 21 percent, and the introduction of accelerated depreciation for machinery in 2018 by the US dramatically altered the incentives to invest in the US rather than in Canada. Policy makers in Canada responded quickly by introducing temporary accelerated cost recovery for capital expenditures, stopping short of policy that would restore a significant competitive edge with regards to taxation[[606]](#footnote-605).

The role of the CG is constitutionally defined and restricted to managing inter–provincial transactions and indirect taxation, whilst the provincial governments provide clear, competitive, and predictable petroleum taxation, which facilitates long term planning and investment decision making. On the other hand, the Nigerian upstream petroleum tax system lacked many of the features that make for clarity and precision. It also lacked the ability to respond promptly or make the required timely fiscal and legislative changes as evident in the Canadian system as well as in the UK.

With respect to Indirect taxes, the Canadian Constitution clearly makes this the constitutional responsibility of the CG and limits the legislative and taxing powers of the PG, to interprovincial or regional transactions, unlike the case in Nigeria, where it remains a source of confusion and uncertainty. The Supreme Court of Canada in the *Canadian Industrial Gas & Oil Ltd. v. Government of Saskatchewan et al[[607]](#footnote-606)case*, examined the constitutional validity of certain statutes enacted by the Legislature of the Province of Saskatchewan[[608]](#footnote-607). In this case, the appellant’s attack on the legislation was made on two grounds: (i). It was contended that both the mineral income tax and the royalty surcharge constituted indirect taxation and are therefore beyond the power of the province to impose; the provincial legislative powers being limited to direct taxation within the province under s. 92(2) of the *British North America Act. (*ii). It was also contended that the legislation related to the regulation of interprovincial and international trade and commerce, a matter over which the Federal Parliament has exclusive legislative power under s. 91(2) of the *British North America Act*.

The appellant was unsuccessful in seeking to obtain a declaration of their invalidity, both at trial and on appeal to the Court of Appeal for Saskatchewan. It then appealed, with leave, of the Court from the judgment of the Court of Appeal to the Canadian Supreme Court. It was held (Dickson and de Grandpré JJ. dissenting): that the appeal should be allowed. According to the Supreme Court (*Per*Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon and Beetz JJ.); the taxation scheme comprising the mineral income tax and the royalty surcharge does not constitute direct taxation within the province and is therefore outside the scope of the provincial power under s. 92(2) of the *British North America Act.*

In yet another matter, the constitutionality of a provincial amendment to a Federal Act by the PG was reviewed with respect to the province of British Columbia[[609]](#footnote-608). The Supreme Court of Canada (SCC) considered the scope of provincial jurisdiction with referenceto the Environmental Management Act (British Columbia)[[610]](#footnote-609) and on January 16, 2020, the SCC dismissed British Columbia’s attempt to regulate the transportation of heavy oil through the province. The nine-member panel delivered a rare oral decision from the bench, stating that it agreed with the British Columbia Court of Appeal’s (BCCA) reasons. The BCCA had unanimously held that the amendments were outside the scope of provincial jurisdiction as they primarily focused on a federal interprovincial undertaking and that their “default position” represented “an immediate and existential threat to a federal undertaking”. The BCCA had also noted that it would be impractical for “different laws and regulations to apply to an interprovincial pipeline every time it crosses a border”, as it would obstruct its operation by forcing it to “comply with different conditions governing its route, construction, cargo, safety measures, spill prevention, and the aftermath of an accidental release of oil”. It stated that parliament had constitutionally received exclusive jurisdiction to regulate these matters, “allowing a single regulator to consider interests and concerns beyond those of individual provinces”. This ruling, whilst providing clarity on the division of legislative powers between the CG and PG’s, also avoided the incidence of multiple charges, taxes, and levies, which is a significant issue and source of uncertainty under the Nigerian Constitution and the upstream petroleum taxation system.

The SCC’s affirmation of the BCCA’s decision provides legal clarity on PGs regulatory jurisdiction over federal undertakings. It agreed with the BCCA’s decision that the proposed amendments should fall at the validity stage of the division of powers analysis, holding outright that provinces do not have constitutional authority to regulate interprovincial pipelines without having to apply complex doctrines including federal paramountcy. This decision importantly offered clarity on the interaction and exercise of PG and CG legislative powers under the Canadian Constitution, as it affects taxation, especially indirect taxation.

Also, in the *Coldwater Indian Band et al v Attorney General of Canada,* the Federal Court of Appeal (FCA) had ruled in favour of the Trans Mountain Expansion (TMX) project approval[[611]](#footnote-610). The FCA dismissed an application for judicial review by several parties that challenged the second approval of the TMX Project. The review related to whether the Crown had adequately addressed deficiencies in its consultation efforts with Indigenous groups prior to the second approval in November 2016 of the TMX Project as being in the public interest. The FCA in 2018 found that the TMX Project’s environmental assessment was deficient and that the Crown had failed to fulfil its duty to consult[[612]](#footnote-611). On June 22, 2019, several parties sought judicial review on the same grounds as the initial Federal Court decision. The FCA dismissed the appeal, finding no basis for interfering with the second authorization of the TMX Project, which it deemed reasonable. In reaching this decision, the FCA commented that:

“The applicants’ submissions are essentially that the Project cannot be approved until all their concerns are resolved to their satisfaction. If we accepted those submissions, as a practical matter, there would be no end to consultation, the Project would never be approved, and the applicants would have a de facto veto right over it.”[[613]](#footnote-612)

This decision represented a major victory for the TMX Project and highlighted the need for clear delineation of the Constitutional limits of the powers of the PG and the CG, especially with respect to legislative and taxing rights in trans provincial matters and indirect taxation. The precise exercise of Parliamentary authority and the demonstration of the independence and transparency of the judicial process builds confidence and trust in the tax system, thus facilitating certainty and stability in the tax system. The centralised federal system, which confers overwhelming fiscal and taxing powers on the FG, as in the case of Nigeria, fiscally incapacitates the federating States.

In the area of tax administration, the Canadian Revenue Authority (CRA), has the responsibility for administering the tax legislation. Where the CRA identifies issues with the application of the legislation, it advises the TPB accordingly. The TPB works closely with the CDF, and TPB staff also have ongoing contact with stakeholders and review court decisions to identify issues in existing legislation. Individual taxpayers may also find that legislation has an impact that they believe is not within the policy intent of the legislation. In such circumstances, taxpayers (or their advisers) may contact the TPB. If, on review, TPB officials consider that the technical application of a particular provision is not in accord with its underlying policy intent, a senior TPB representative may issue a comfort letter advising of their intention to recommend to the minister of finance an appropriate technical amendment to the legislation. Real time interventions of this nature make for clarity in legislative intent, accuracy in legislative drafting, and effective compliance. Taxpayers (and their advisers) generally rely on such comfort letters issued by the CDF in proceeding with transactions and in preparing tax returns—although accounting standards may require certain firms to identify in their financial reports that a legislative amendment is required to support the tax position that the firm has taken. The CRA also rely on these comfort letters, either to assess tax in accordance with the policy articulated by the CDF or, in certain cases, to suspend an assessment of tax pending enactment of the change.[[614]](#footnote-613) The binding nature of rulings and the practical proactive approach makes for real time review of legislation, and for certainty and confidence in the system, which features are missing in the tax administration of upstream petroleum taxation in Nigeria.

**CONCLUSION**

The decentralised fiscal federalism under the Canadian Constitution ensures that the CG and PG’s are fiscally responsible and exercise tax legislative powers on income and direct taxes, in their respective jurisdictions thus avoiding overlaps and the uncertainty associated with taxation of oil and gas, as is the case in Nigeria. The ownership of oil and gas by the provincial governments and the alignment of policy making and legislative drafting between the CG and the PG, enhance the timely enactment of tax legislation which are well researched, clear, precise and predictable.

The policy reforms undertaken in the income tax system highlight some of the challenges with clear fiscal and tax objective setting and drafting new or evaluating existing tax rules, as well as reconciling different and competing aspirations of the country and investors. The linkages between created and the well-defined responsibilities and reform initiatives facilitate the responsive evolution of clear, neutral and competitive tax system capable of generating sufficient revenue for governments as well as fair returns to the investors. In this regard, the direct linkage of tax and fiscal policy design and formulation to legislative drafting is significant for achieving clarity and timely enactment of tax legislation.

The single petroleum income tax system in place also contributes to the creation of a neutral tax system and tax administration. The Canadian petroleum tax system has been managed effectively relatively, despite the decentralized Canadian federal structure and the provincial pressures. The interplay of these factors ensure that taxes are determined accurately for timely payments and collections[[615]](#footnote-614).

**CHAPTER 9**

**THE PETROLEUM INDUSTRY ACT (PIA) – A NEW FRAMEWORK.**

**9.0 INTRODUCTION**

The Nigerian petroleum industry has been in dire need for holistic reforms in the areas of governance, policy, law, taxation, ease of doing business, and local content and participation in the industry. This research clearly highlights the uncertainties in the areas of fiscal policy, and upstream petroleum taxation and the need to achieve clarity and predictability required for the growth and development of the industry and the country. The 2008 Nigeria Petroleum Industry Bill (NPIB)[[616]](#footnote-615) was a major response by the FGN to comprehensively reform the commercial, fiscal, tax, legislative and regulatory framework and administration of the petroleum industry. However, it has taken close to two decades for the NPIB to be enacted as the Petroleum Industry Act, (PIA) 2021[[617]](#footnote-616). The principal objective of the PIA is to provide a clear, transparent, and simple to administer legislative, fiscal and taxation system and regulation of the Nigerian Petroleum Industry. The PIA further seeks to balance the government’s quest for increased revenue generation with the promotion of sustainable investment in the industry, whilst ensuring a fair return and profits for investing companies through a clear, predictable, and stable regulatory, fiscal and tax system[[618]](#footnote-617). The PIA further attempts to address environmental concerns arising from oil industry operations, as well as the development of host communities[[619]](#footnote-618).

In this chapter, we examine the provisions of the PIA 2021[[620]](#footnote-619), as they address the uncertainties and gaps in policy, tax, and regulatory framework in the upstream petroleum taxation system examined in this thesis. The specific changes to the licensing, regulatory, upstream resource and income taxation, royalty, marginal field operations and the tax administrative and dispute resolution system for the upstream petroleum industry introduced by the PIA form the subject matter of this analysis.

Taxation by its very nature[[621]](#footnote-620) can be complex and for a complex and dynamic international industry[[622]](#footnote-621), such as the petroleum industry, achieving clarity, certainty and consistent understanding of the fiscal policy and tax legislation and regulatory framework has been a persistent problem and challenge in Nigeria, as is the case in many resource producing countries[[623]](#footnote-622). To address the peculiar uncertainties and gaps identified in the constitutional, fiscal, legislative, and regulatory framework and basis of the old PPTA/PSC upstream petroleum tax system[[624]](#footnote-623), which are identified and examined in our preceding chapters[[625]](#footnote-624), we analyze the following aspects and changes introduced under the PIA:

1. a new regulatory and licensing framework
2. a separate and dedicated fiscal regime for oil and gas
3. a new Tax and Royalty system
4. a new marginal field fiscal and tax regime
5. a revised tax and dispute resolution framework.

**9.1** **THE NEW LICENCES AND REGULATORY REGIME UNDER THE PIA**

In line with the 1999 Nigeria Federal Constitution, the PIA[[626]](#footnote-625) confers the exclusive ownership and control of mineral and natural resources, including oil and gas[[627]](#footnote-626) on the FG. The FG is also granted the exclusive fiscal[[628]](#footnote-627) and income taxing powers under the 1999 Constitution[[629]](#footnote-628). The FG has ownership, control and authority to regulate petroleum and natural resources operations. The FG also has the exclusive right to tax incomes, profits and capital gains and this has created a vertical imbalance between the FG and the federating States and local councils. As discussed in chapter 3 of this thesis, whilst the FG has sole responsibility to legislate matters in the Exclusive legislative lists, under the Constitution, the federating States are constitutionally entitled to legislate matters on the Concurrent list, along with the FGN, as well as on matters in the residual list of the Constitution. The exercise of these legislative powers has sometimes resulted in ambiguities in the taxation, governance and regulatory regime, and the administration of petroleum operations. The governance, licensing and regulatory framework under the PA and in the PPTA regime as amended by the PSC Act, are some of the issues requiring clarity and certainty that the PIA sets out to address.

The PIA has introduced a new regulatory and licensing framework which replaces the licencing and regulatory framework under the PA and Regulations. The PIA regulatory regime deals with oil and gas as well as condensates, unlike the focus on oil alone under the PPTA and PA regime. Under the PA, some of the terms and the role of the agencies responsible for the licensing arrangement were ambiguous and not fit for purpose. Also, the process of renewals or change was always long drawn, giving too much allowance for administrative and ministerial interference. The regulatory framework was rather ill-defined under the PA and resided with the Department of Petroleum Resources (DPR) and the NNPC. The NNPC also doubled as the national oil company.

The new regulatory framework consists of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC or the Commission) for upstream petroleum operations, and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) for midstream and downstream petroleum operations. These two agencies are responsible for the technical and commercial regulation of petroleum operations in their respective sectors. The agencies have the power to acquire, hold, and dispose of property, as well as sue and be sued in their own name. Arbitration is however the preferred method of dispute resolution in the petroleum industry[[630]](#footnote-629). The technical and commercial regulation of upstream petroleum operations were originally carried out by the DPR and NNPC. With the PIA, the DPR has ceased to exist, while NNPC has been incorporated as a commercial limited liability company (NNPC Ltd). The Commission is responsible for the issuance of licenses and leases for carrying out petroleum operations. There are three types of licences which replace the licensing framework which existed under the PA. The new nomenclature of the licences reflects the focus on the entire petroleum resource supply chain and not just oil as was the case with the PA. There are three types of licenses, as was the case under the PA. The first is the Petroleum Exploration License (PEL) which replaces the Oil Exploration License (OEL). The PEL gives the licensee the exploratory rights on a non-exclusive basis for a single renewable 3-year term. The second is the Petroleum Prospecting License (PPL) which replaces the Oil Prospecting License (OPL). The PPL gives licensees the exclusive right to drill exploration and appraisal wells, do corresponding test production and a non-exclusive right to carry out petroleum exploration for a maximum of 6 years for onshore and shallow water acreages and 10 years for deep offshore and frontier acreages. The third is the Petroleum Mining Lease (PML), which replaces the Oil Mining Lease (OML). This is granted to qualified applicants to win and dispose of crude oil, condensates, and natural gas for a maximum of 20 years. The administration of the licenses (including approvals and revocation) will be handled by the Commission and no longer solely under the purview of the Minister as is the case under the PA.

The new regulatory and licensing framework for petroleum operations brings more clarity and stability to petroleum prospecting and mining leases as the terms and the process of renewal are clearly articulated. Model licenses are to be made part of the petroleum contracts. To transit into the new licensing regime, the PIA requires holders of OPLs and OMLs granted under the PA to opt into the new regime by converting their respective OPLs and OMLs into appropriate licenses or leases to be issued under the PIA. The two key considerations for upstream operators converting the licenses are the ﬁscal framework and the downsizing of the license or lease acreages within their portfolio. An application for conversion is required to be submitted under the Regulations made pursuant to sections 92,93, 94 of the PIA [[631]](#footnote-630), and for the renewal of Oil Mining Leases, made pursuant to section 303 (1) of the PIA. These Regulations shall not apply to renewals of petroleum mining leases granted pursuant to the section 86(6) of the PIA and the Acreage Management and Drilling and Production Regulations, 2022. For application for conversion made pursuant to Sections 92, 93 and section 94 or s.303(1) of the PIA respectively, the Commission shall within 30 days and 90 days make a recommendation to the Minister to grant the applicable license or lease after determining that the application has merit and has met the requirements for conversion[[632]](#footnote-631). The Conversion to the new regime will terminate all unconcluded court and arbitration cases relating to OPL/OMLs, guarantees and stabilization clauses provided by NNPC including capital allowance on investments enjoyed for gas production. Upon conversion, the OML holders will be required to relinquish up to 60% of their existing acreage. The conversions shall be concluded or be effective at the earlier expiry dates of the current licenses or 18 months from the effective date of the Act which is February 2023. Where OPL or OML holders choose not to convert to the PIA regime, the current regime will continue to apply to them until the expiration of the licenses. Upon expiration, the new regime will apply to the renewed licenses. Also, all existing and producing Marginal Fields are to be granted separate PMLs. All Marginal Fields (declared prior to 1 January 2021) that are not yet producing or in development are to be converted to PPLs and will benefit from the terms for new acreages under the Act.

Upstream petroleum companies would therefore have to evaluate the best course of action to take in respect of each license or lease they currently operate based on the inherent peculiarities of the geological formations within those assets and the best value that can be derived from exploiting the assets, as the holders of licences/leases may elect to remain under the existing regime rather than convert to the fiscal regime under the PIA[[633]](#footnote-632). Companies that voluntarily convert shall benefit from the fiscal provisions under the PIA[[634]](#footnote-633). It is, however, not clear if gas fiscal incentives granted under sections 11 and 12 of the PPTA for the utilisation of associated and non-associated gaswill continue or cease to apply to the new licenses granted under the PIA. It is important to note that OPLs or OMLs that fail to convert at the expiration of the contract period shall be relinquished or renewed on the new fiscal terms under the PIA. Furthermore, new entrants arising from bid rounds carried out after the passage and coming into force of the PIA shall automatically be subject to the provision of the PIA.[[635]](#footnote-634).

The PIA better defines the powers of the Minister for Petroleum[[636]](#footnote-635) Resources (MPR) and restricts it to general supervisory powers over the industry, and the right to order cutbacks in crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria. This hopefully will enhance the clarity and the times lines for processes, whilst curtailing the tendency for abuse of ministerial powers with respect to award licences, etc., as was noticeable under the PA.

**9.2** **THE NEW OIL AND GAS FISCAL REGIME UNDER THE PIA**

We have in chapters 3 & 4 of this thesis examined the terms of the fiscal regimes under the PPTA as amended by the PSC Act, the uncertainties in terms, as well as the interaction of the PPTA/PSC regimes with the CITA and the gas fiscal incentives granted to encourage gas development. In addition to the issues and uncertainties identified and arising from the interaction of the multiple fiscal regimes affecting upstream petroleum operations under the PPTA, and the focus on oil as the basis for PPT, there are issues of ascertainment of revenues, profits subject to tax, pricing, nature of allowances and the treatment of cost, including decommissioning and abandonment costs. There are also issues of poor definition of terms and concepts, as well as the incidence of various taxes and charges affecting upstream petroleum operations, as well as the challenge of competent drafting of substantive provisions of fiscal and tax legislation affecting upstream petroleum operations.

The draft PIB submitted to the NA in 2008 by the executive and the 2016/2017 Nigeria Oil and Gas Policy documents and the Petroleum Fiscal policy review carried out by the MPR, NNPC and the MOF, sought to extensively address many of these issues and reform the fiscal regime, legislation and regulations affecting the entire petroleum industry. After several amendments and the unbundling of the PIB into separate parts dealing with fiscal, commercial, and governance aspect of the petroleum regime, the PIA was enacted in 2021. A principal element of the PIA is the Petroleum Industry Fiscal Framework (PIFF). The fiscal framework clearly separated the upstream, the mid and downstream petroleum fiscal and taxation systems, as well as articulated the separate basis of gas taxation which was a major factor creating distortions, gaps and uncertainty in upstream petroleum taxation.

The PIFF seeks to establish a progressive fiscal framework that encourages investment in the different terrains and assets, whilst balancing rewards with risk, and thereby enhancing revenues to the FG. It provides a forward-looking fiscal framework[[637]](#footnote-636) that is based on core principles of clarity, dynamism, and fiscal rules of general application. The PIA also has as a priority the simplification of the administration of petroleum taxation for upstream, mid, and downstream petroleum operations. The promotion of equity and transparency in the petroleum industry fiscal regime was therefore paramount. Whether these objectives are appropriately reflected in the legislative terms and language of the PIA is something that we address in our analysis of the provisions of the PIA.

The PIA fiscal framework[[638]](#footnote-637) is a composite of trade-offs across different objectives, i.e., early revenues versus investment efficiency, progressivity versus competitiveness, and tax incentives that are intended to drive a critical mass of investments. With the introduction of a Hydrocarbon Tax (HT) and Company Income Tax (CITA) to upstream petroleum operations, the challenge for the PIA is how this will establish a fiscally neutral and predictable regime, which addresses distortions and ambiguities in revenue valuation, pricing, allowances, and cost treatment noticed under the PPTA, without creating new ones in the legislative and compliance framework.

With respect to the types of hydrocarbons to be exploited, the PIA introduces six (6) key guiding principles for the taxation of oil and gas produced from different terrains. These are right pricing of crude oil and gas, and the products, the sustainability of the resources, non-consolidation, or the non-recovery of gas costs from oil income which was the case under the PPTA regime. This entails separate fiscal treatment of the different resources to minimize the arbitrage and distortions, with a view to enhancing overall fiscal neutrality, clarity, stability, progressiveness, and competitiveness of the tax regime.

To achieve the above stated objectives for upstream petroleum taxation, and based on the guiding principles of distinct asset and terrain, non-consolidation of oil and gas, and non-recovery of gas costs from oil, the PIFF under the PIA splits the PPT regime into two namely, Hydrocarbon Tax (HT) and Companies Income Tax (CIT), which now apply to companies engaged in upstream petroleum operations onshore, whilst the deep offshore and frontier acreages are both exempted from HT. HT is at a significantly reduced rate to replace PPT, and an additional income tax, based on the provisions of the CITA imposed on upstream petroleum operations. The application of these two distinct taxes to upstream petroleum operations essentially presents the challenge of proper cost and income attribution. The interaction of the PIA two-tier fiscal regime and the royalty system for the different licences and upstream petroleum terrains still presents opportunities for over-laps and for arbitrages. This arrangement cannot therefore be said to have entirely achieved a simplified, neutral, and progressive fiscal and tax regime, even though there is a clear separation of oil and gas[[639]](#footnote-638), and the headline tax and ETR are reduced.

The PIA states that companies engaged in upstream petroleum operations will be required to settle their CIT liability on an actual year basis, using a similar estimate mechanism to that provided for HT. To achieve this separation in the treatment of costs for oil and gas and for calculating HT and CIT, the PIA provides that all allowable expenses for the purposes of calculating HT must be directly related to the production operations, whilst the non-direct costs will be deductible under CIT. HT will however not be deductible for CIT purposes. CIT will also be applied as an entity-based tax, thereby allowing for consolidation of results across terrains, and as such the PSC Contract Area ring fence taxation challenge and revenue losses under the PPTA as amended by the PSC Act, is largely addressed for CIT purposes.

The PIFF under the PIA has also introduced a dichotomy in the treatment of IOC’s and the indigenous and small operators in that it creates a special fiscal regime for the deep offshore and frontier acreage operations, as an incentive for investment in the deep offshore. This incentive, though designed to achieve a clear purpose, is seen as discriminatory and potentially may result in divestment from onshore and shallow water acreages to offshore terrains. The PIFF fiscal arrangement under the PIA maintains a full legal separation of petroleum infrastructure ownership and operations, and separate companies are to be registered to conduct different activities[[640]](#footnote-639).

The PIA has introduced several other fiscal changes affecting marginal field petroleum operations and taxation, a modified royalty regime[[641]](#footnote-640), the ascertainment of crude oil revenue[[642]](#footnote-641), and decommissioning and abandonment treatment, which we examine in further detail in section 9.3 below. Another potentially contentious PIA fiscal change is the fact that the fiscal regime shall only apply to operational companies, upon the voluntary conversion of existing Oil Prospecting Licences (OPLs) and Oil Mining Leases (OMLs) to Petroleum Prospecting Licences (PPLs) and Petroleum Mining Licences (PMLs), respectively, or the termination or expiration of unconverted licenses, and the renewal of OMLs[[643]](#footnote-642). In effect, holders of OPLs and OMLs that do not convert to PPLs and PMLs will continue to operate and be taxed under the PPTA fiscal regime, pending the expiration of their licences. This will be an area of continuing uncertainty along with the management of the transition from the old to the new fiscal framework under the PIA.

**9.3 A NEW TAX REGIME – HYDROCARBON AND COMPANY INCOME TAX**

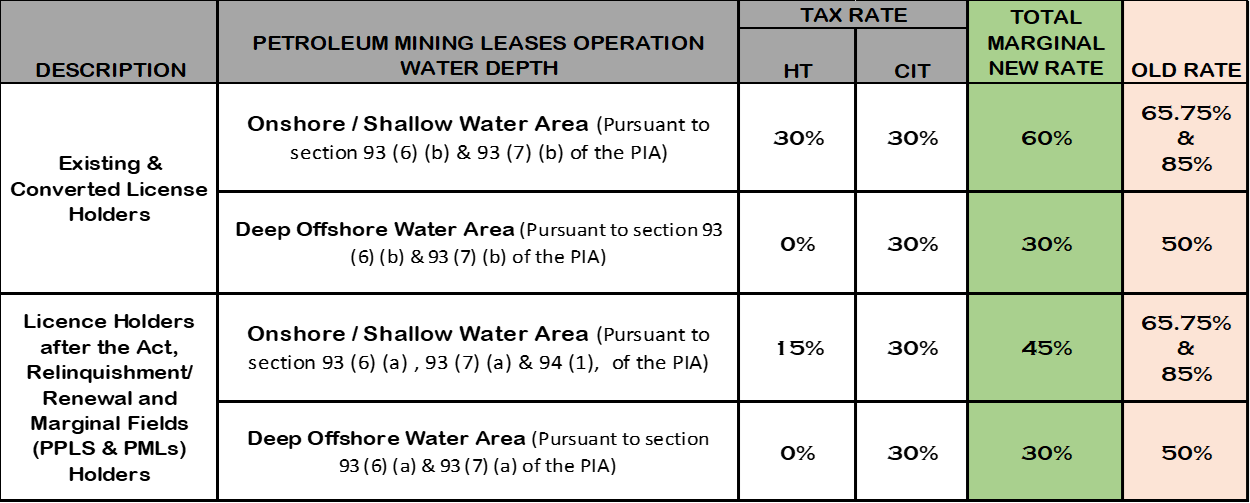
Under the PPTA/PSC regime, the primary fiscal objective was high government take[[644]](#footnote-643). The high government take from PPT/PSC tax and royalty under the PPTA, failed to properly ring fence the expenditure and income treatment despite the attempt to introduce the concepts of ‘contract area’, ‘cost oil’, ‘profit oil’ and ‘Tax oil’ as these concepts and terms were inadequately defined and the rather clear objectives of the PSC arrangement. There were also losses and distortions arising from the multiple tax rates, and the lack of clarity in the treatment of gas. This was further complicated by the leveraging of gas capital expenditure on oil capital expenditure and lack of well-defined cost attribution or allocation principles. The incidence of multiple taxes and levies on upstream petroleum operations all added to creating the distortions and lack of clarity in upstream taxation.

With the introduction of Hydrocarbon Tax (HT), [[645]](#footnote-644) and corporate income tax (CIT) [[646]](#footnote-645) by the PIA for upstream petroleum operations, to replace the PPT under the PPTA tax regime as amended by the PSC Act, the PIA attempt to better ascertain revenue and define cost for determining chargeable profits for upstream petroleum taxation. While HT applies to crude oil, field condensates and natural gas liquids from associated gas, it does not apply to associated gas, non-associated gas, and frontier acreage. Also, unlike the case with PPT which applied to onshore, shallow and PSC petroleum operations in the deep offshore under the PPTA as amended by the PSC Act, the PIA clearly exempts the deep offshore upstream petroleum operations from HT, to encourage exploration activities in the deep offshore acreage. To determine the chargeable tax for the relevant terrains and operations, section 267 of the PIA states that the chargeable tax for any accounting period of a company shall be a percentage of the aggregated chargeable profit for that period. For holders of petroleum mining leases with respect to offshore and shallow water areas, the chargeable tax shall be 30% of crude oil profits, while for holders of petroleum prospecting licenses for onshore and shallow waters, the chargeable tax shall be 15% of crude oil profits.

The introduction of the CIT to upstream petroleum taxation[[647]](#footnote-646) at the applicable CITA rate in line with the provisions of the CITA[[648]](#footnote-647), results in the application of two distinct taxes to upstream petroleum operations under the PIA framework. A single consolidated income or profit tax on upstream petroleum operations would have avoided the creation of opportunistic distortions and challenges to compliance and administration in the upstream petroleum tax system. A single consolidated income or profit tax would be revenue neutral with proper adjustment to the applicable rate. Moreover, with a significant royalty regime in place, which guarantees early revenue streams to government, a reduced number of tax incidence would have facilitated the creation of a simple tax system with the reduced cost of compliance and administration.

Under the PPTA/PSC regime, with multiple PPT rates ranging from 50% for PSC for the deep offshore, and the tax rate of 65.75% under the PPTA for the first five (5) years of a company yet to attain full commercial production and continuous sales, to the top rate of 85% PPT, for onshore and shallow water acreage, this created various overlaps and distortions. The replacement of the PPT regime by the PIA with HT and CIT largely addresses the issue of multiple PPT rates as well as reduced the ETR. It has however created a two-tier income tax regime for upstream petroleum operations based on asset type and terrains as illustrated in the table below.

**HT & CIT Tax Rates under the PIA:**



With CIT, now applicable to upstream petroleum operation, the confusion on whether gas income produced along with oil within an integrated petroleum operation should attract tax at PPT or CIT[[649]](#footnote-648), has also now been addressed under the PIA. However, the two-tier income tax system applies different tax rates to concessions, terrain, and asset types, and presents challenges to creating a simplified, neutral, and single petroleum income tax system for upstream petroleum operations[[650]](#footnote-649) as there is lack of clarity in the cost attribution to asset types, terrain, and licences for HT and CIT respectively, for determining the chargeable tax[[651]](#footnote-650). In addition to the cost base for HT and CIT[[652]](#footnote-651), the determination of the fiscal oil price[[653]](#footnote-652) which is determined by NUPRC, is another potential source of confusion and uncertainty with respect to ascertainment of value of crude oil revenues, treatment of expenses and pricing. The PIA has however separately addressed the subject of PSC petroleum operations[[654]](#footnote-653).

The PIA specifically addresses the subject of PSCs executed prior to the commencement of the PIA. It states that HT will be charged separately on the profits upon conversion to a PML and paid during each accounting period in accordance with the provisions of section 92 of the PIA. However, the deep offshore and the frontier acreage upstream petroleum operations are exempt from HT until reclassified under section 68(3)[[655]](#footnote-654) of the PIA. This exemption is aimed at incentivising exploration and investment in the deep offshore and frontier acreage. It has however been suggested that this preferential treatment of the deep offshore operations may result in the IOCs divesting from onshore assets, to focus on offshore operations as this also “technically” exempts the IOCs from the 3 percent contribution to the Host Community Development Trust Fund (HCDTF)[[656]](#footnote-655) and confers some cost advantages on the IOCs, over the indigenous oil companies, who are disadvantaged to compete and grow.

It is important to state that the PIA has brought more clarity to the determination of the value of chargeable crude oil revenue for ascertaining profits chargeable to HT. Under the PPTA / PSC regime the scope of the provisions of section 9 of the PPTA[[657]](#footnote-656), as amended by sections 2 & 3 of the PSC Act[[658]](#footnote-657) was too broad and open to different interpretations[[659]](#footnote-658). The PIA has addressed this ambiguity under the PPTA[[660]](#footnote-659) as it relates to the basis for ascertaining the value of crude oil for the purposes of calculating HT. Section 262 of the PIA states that:

“The crude oil revenue of a corporation for any accounting period, shall be the value of any chargeable oil adjusted to the measurement points, based on the – (a) the revenues from the sale of all chargeable oil; and (b) the total amount of chargeable oil disposed of….”

By virtue of this provision, the extraction, storage, and transportation costs of crude oil will not be included in ascertaining the taxable revenue for HT purposes. Also, there are always challenges in determining what income is incidental and which income is directly due from petroleum operations, to ascertain the chargeable profits of the company, as this is now limited to proceeds of valuable oil sold and the value of chargeable oil disposed. With this clarification, incidental income would now be liable to tax under CITA. Accordingly, the value of chargeable oil disposed shall be based on the aggregate value of crude oil determined for royalties for all fields. As stated earlier, the fiscal price is as determined or advised by the Commission (NUPRC) and will be set on an “export parity”[[661]](#footnote-660) basis which is responsive to fiscal changes etc. This is another potential contentious issue for determining the realisable price under the PPTA and the MOU signed between the FG and the IOCs, examined in chapter 4 of the thesis[[662]](#footnote-661).

The PIA has achieved the reduction of the headline tax rate and ETR for all terrains and assets compared to the PPTA, however the consolidation of the HT and CIT would have avoided the ambiguities and potential arbitrages due to different costs base and simplified the administration of the upstream income or profit tax regime, as is the case in Canada discussed in chapter 8, or the evolving taxing framework for the UK field-based CIT for the petroleum industry examined in chapter 7, following the abolition of PRT[[663]](#footnote-662) and Royalty[[664]](#footnote-663) respectively.

The PIA fiscal and taxing framework has however resolved several uncertainties, including the controversy relating to the applicable legislation for condensates and NGLs that are subsequently commingled with oil. The applicability of HT will depend on whether the volumes of the condensate or NGLs can be determined at the measurement point or exit of the gas processing plant. The measurement point is defined as downstream of the flow station. The gas, condensates and NGLs from non-associated petroleum gas will not be subject to HT even when commingled with oil, provided that the related volumes can be determined at the measurement points or at the exit of the gas processing plant.

**9.3.1. THE PIA TAX EXPENDITURE FRAMEWORK:**

Under the PPTA, there were over-laps and lack of clarity in the tax treatment of certain expenditures, such as interest income, difference in exchange, CBN commissions and charges and contributions, decommissioning costs, etc, as discussed in chapter 4 of the thesis. To bring more clarity and certainty to the tax treatment of these expenditures, the PIA has expanded the criteria for deductibility and non-deductibility of expenditure from the “wholly, exclusively, and necessarily” (WEN) test as existed under the PPTA, with the inclusion of a ‘reasonably’(WREN)[[665]](#footnote-664) or reasonability element. The PIA, however, still fails to define each of the elements of the criteria, as was the case under the PPTA as amended. Consequently, these remain open to interpretational challenges[[666]](#footnote-665). The PIA has also introduced a 65% cap of gross revenue for deductible costs for computing HT[[667]](#footnote-666). This includes capital allowances, and all operating expenses except for certain exemptions such as rent, royalty etc. Where costs exceed the cost price ratio limit of 65% of gross revenue, they will be carried forward to subsequent years of assessment, but subject to the same cap. This is a significant limitation as it affects several heads of expenditure and allowances and is new.

Tax allowable expenses for upstream petroleum operations under the PIA now include rentals paid for petroleum mining lease (PML) or petroleum prospecting license (PPL), royalties, repair and maintenance expenses, drilling expenditure of the first exploration well and the first two appraisal wells in the same field. The PIA states that direct costs of upstream production activities shall be deducted for HT and indirect costs are to be deducted under CIT[[668]](#footnote-667). This provision, without more, is an avoidable ambiguity on the basis for separating direct and indirect cost under the PIA. Also, in line with section 263(d) of the PIA, an expenditure, (tangible or intangible costs) directly incurred in connection with the drilling of the first exploration well and the first two appraisal wells in the same field will be deductible for tax purposes. This is different from what applied under section 10(1)(j) of PPTA[[669]](#footnote-668) which allowed any other expenditure, including tangible drilling costs directly incurred in connection with drilling and appraisal of a development well, but excluding expenditure which is qualifying expenditure for the purpose of computing capital allowances (CA) under the Second Schedule to the Act. This provision of the PIA as it stands restricts the deductibility of costs relating to an exploration well to only the first well. With the capital-intensive nature of upstream petroleum operations, and since exploration wells are the first set of wells to be drilled, it would only have been appropriate if companies are allowed to take full deduction of costs incurred bearing in mind the Cost-Price Ratio (CPR)[[670]](#footnote-669) capping of 65% gross revenue per year already imposed by PIA.

The PIA has replaced the Investment Tax Allowance (ITA) and Investment Tax Credit (ITC), that existed under the PPTA, with production allowances[[671]](#footnote-670) on crude oil for new acreages, at the lower of 20% of the fiscal oil price and US$ 8 per barrel volume, and for converted acreages, at the lower of 20% of the fiscal oil price and US$ 2.50 per barrel for production of up to 500million barrels and US$ 4 for post 500million barrels produced. It is to be noted that the ITA & ITC had contentious issues and had gone to arbitration, and in some cases to the High court, especially under the PSC regime[[672]](#footnote-671). Production allowance will not apply to deep offshore operations[[673]](#footnote-672) which are not subject to HT, since deep offshore upstream petroleum operations are statutorily exempt from HT, but subject to CIT. These provisions on allowable deductions have several ambiguities and the CPR capping constitute avoidable distortions to the treatment of expenditure and the basis for ascertaining the chargeable profits for HT and CT on upstream petroleum operations.

**9.3.2** **DECOMMISSIONING AND ABANDONMENT COST UNDER THE PIA**

The treatment of Decommissioning and Abandonment (D&A) expenditure was another subject which was uncertain under the PPTA/PSC fiscal regime[[674]](#footnote-673). The PIA has addressed the subject by clarifying the tax treatment of D&A expenditure for HT purposes. The PIA states that it shall be in line with the best petroleum industry best practice. However, D&A expenditure shall not take place without the written approval of the Commission or Authority and the responsibility and liabilities relating to D&A shall be that of the licensee or lessee or contractor under the PSC. Each lessee and licensee shall be required to set up, maintain, and manage a D&A Fund held by a financial institution that is not an affiliate of the lessee or licensee. It will be in the form of an escrow account accessible by and approved by the Commission[[675]](#footnote-674) or the Authority as the case may be. The new escrow account shall include any funds that have accrued prior to the effective date of the PIA, and the funds shall form part of the Fund under the PIA. The D&A plan shall establish the yearly amount to be contributed to the respective D&A Fund which shall be based on a reasonable estimate by the licensee or lessee and be subject to approval by the Commission. The bank account shall be controlled by the investor, and the Commission can have direct access to the funds in case of default. The lessee or licensee is to provide a statement of account every year, to the Commission, Authority and Service.

The D&A contributions paid into a Fund approved by the Commission are now tax deductible provided the balance is subject to tax under the PIA at the end of the life of the field where the lessee receives the surplus. This was not the case under the PPTA which ostensibly disallowed funds accrued for D&A, and only allowed actual incurred D&A expenditure. The PIA provision on tax deductibility of D&A expense or contributions is certainly an improvement on the position under the PPTA, although the Commission’s role should be under clear guidelines.

**9.3.3 GAS TAXATION UNDER THE PIA**

Under the PPTA/CITA regime, certain fiscal incentives were granted to encourage the development and production of associated and non-associated gas[[676]](#footnote-675), as the PPTA focused on oil development and production as the basis for taxation. The fiscal incentives for gas development leveraged on the oil capital expenditure, under the PPTA, whilst gas income was taxed under CITA terms. Until the decision in the Agip case discussed in chapter 4 of the thesis, there was a lingering confusion on the interaction of the PPTA and CITA with respect to treatment of gas development capital expenditure under PPTA oil capex, and gas income under CITA rules. To address the distortion arising from the interaction of the PPTA and CITA regime, as well as broaden the basis of taxation to cater for gas, and the regulation of gas prices, the PIA has clearly separated the development, production, and taxation of gas upstream, midstream, and downstream respectively. The PIA, however, retains the fiscal incentives for gas in integrated petroleum operations. The PIA states clearly that gas produced from upstream operations will be subject to income tax in line with the provisions of CITA[[677]](#footnote-676). In effect, both cost and income will be subject to CITA requirements and HT as a resource tax will not apply to expenditure or profits from gas produced upstream, as was the case under the PPTA.

The PIA further provides a clear royalty regime for gas at the rate of 5% for natural gas and natural gas liquids production. This royalty rate is reduced to 2.5% where the natural gas is produced and utilized in Nigeria. Furthermore, the PIA has introduced changes that provide the much-required regulatory framework for natural gas development and taxation[[678]](#footnote-677). The PIA has commenced the deregulation of the gas market by establishing a progressive cost-reflective pricing framework with a structure for market intervention through the domestic gas supply obligations and a wholesale natural gas market.

To enhance the protection of the environment, the PIA has introduced measures and penalties to prohibit the flaring of gas except in cases of emergency, in pursuance of an exemption granted by the Commission or as an acceptable safety practice under established regulations. Upstream operators involved in the production of natural gas in an integrated oil and gas operation are to submit, within 12 months of the effective date of the PIA, a natural gas flare elimination and monetisation plan in accordance with Regulations to be issued by the Commission. A Midstream and Downstream Gas Infrastructure Fund (MDGIF) has been established under the PIA. It is expected to promote equity investments in midstream and downstream gas infrastructure projects. Also, to create long term stability and predictability for the prices of marketable natural gas, the pricing framework is provided for in the PIA[[679]](#footnote-678). This clarity of terms and treatment and market intervention requirement were absent under the PPTA / CITA gas income taxation regime, whilst the confusion on the tax treatment of gas flared charges has also been properly addressed under the PIA.

The PIA extends the grant of tax incentives to midstream petroleum operations, as this was previously limited to upstream integrated oil and gas operations and downstream operations. These incentives include ten (10) years tax holiday for investment in the gas pipeline, and a contribution of 3% of annual operating expenditure to a Host Community Trust Fund. With the more precisely stated obligations and well-defined terms and rates, under the PIA, and the enhanced regulatory framework for compliance, the confusion, uncertainty, and the lack of well-defined boundaries in the treatment of gas produced upstream, mid-stream and downstream, have been addressed.

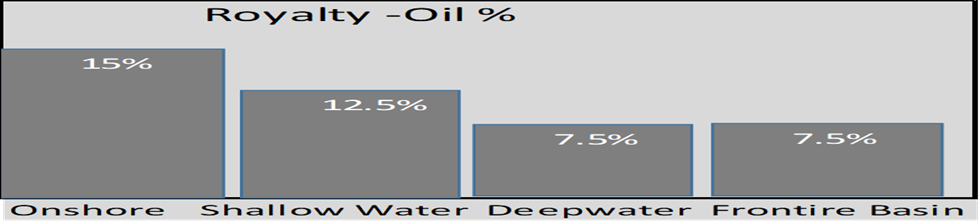
**9.4 THE NEW ROYALTY SYSTEM UNDER THE PIA**

Under the Petroleum Act (PA) and the PPTA as amended by the PSC Act, the holder of an OPL or OML shall pay royalties to the FG as soon as production starts[[680]](#footnote-679). This is usually a monthly cash payment at the prescribed rate or by way of royalty oil under the PSC arrangement. Royalty as an economic rent is essentially non-neutral and a regressive tax[[681]](#footnote-680) and has been abolished in some jurisdictions, such as in the UK[[682]](#footnote-681) and Norway, and presently being proposed in Australia, New Zealand, and Canada[[683]](#footnote-682). As much as royalty remains a means for capturing early economic rents, which makes it attractive for countries like Nigeria, the absence of expenditure reliefs, even in the event of reduced rates, still encourage investment delay leading to deferral and/or loss in fiscal revenues, as well as difficulty of formulating a certain fiscal regime that suits various regions[[684]](#footnote-683) with different geology and cost structures, and smaller fields.

The PA licensing and royalty regime for upstream petroleum operations as examined in chapter 3 & 4, identified the contentious issues beyond rates and terrains (onshore, shallow water and deep offshore), as well as lack of clarity of terms on issues such as the basis, the applicable production volumes, the fiscal point, and the price ascertainment for royalty, as well as the price thresholds and timing for amendment. After several years of non-review and allegations of revenue loss by government, in 2019, a price-reflective royalties’ scheme was introduced. Also introduced is an 8-year periodic review of the PSC to enhance the regime. The penalties for non-compliance as existed under the PSC Act had not been initiated or failed to address the uncertainties in the royalty system[[685]](#footnote-684). A revised penalty has now been introduced under the 2019 amendment to the PSC Act.

Whereas the old royalty scheme was a function of terrain and production volumes, until amended in 2019 under the PSC Act, which sought to rectify the failure and loss of revenues under section 16 of the PSC Act, the PIA has revised the royalty regime and retained a slightly modified terrain /asset based, production and price reflective rate. So, aside from the delineation of terrain, there had been lack of clarity on the production volumes and price correction mechanism as well as the measurement point for royalty purposes. Following the PIA terms, for royalty purposes, condensates will be treated as crude oil and natural gas liquids as natural gas. With respect to production, the applicable rates on chargeable volumes in the relevant areas are different for crude oil and natural gas, depending on the terrain. For oil produced onshore, the royalty rate is 15%, whilst shallow water attracts 12.5%, and the deep offshore and frontier basins attract 7.5%, as shown in the table below.

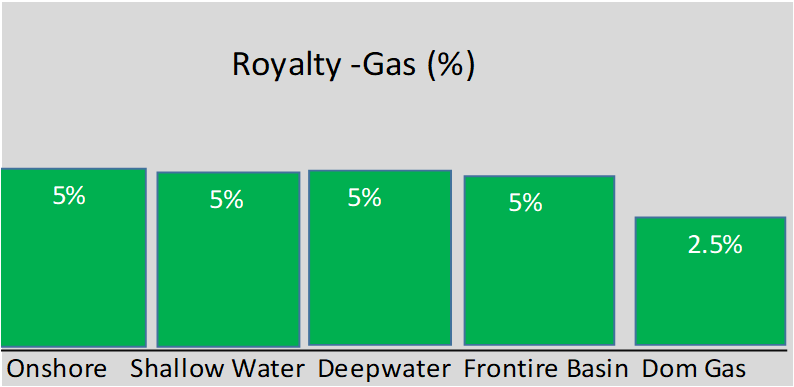
**Royalty Rates by Production - Oil**



Onshore Shallow Water Deep Water Frontier Basin

For deep water operations with production in a month of not more than 50,000 bopd, the royalty rate is 5%. For production over and above 50,000 bopd, it is at the rate specified above, and for onshore and shallow water fields, including marginal fields with crude oil and condensate production not more than 10,000 bopd during a month, the royalty rate is, for the first 5,000 bopd, 5%, and for the next 5,000 bopd, 7.5%. Fields with crude oil and condensate production above 10,000 bopd during a month, the share of production above 10,000 barrels is at the rate specified in the table above.

**The Royalty rates by Production – Gas**



Onshore Shallow Water Deep Water Frontier Basin Domestic Gas

The Royalty rates for gas production is 5% for onshore and shallow waters, and 5% for deep offshore and frontier basin. The PIA has equalized these rates to encourage gas development and utilization.

The PIA has also introduced a price-based royalty for crude oil and condensates. The price ranges for crude oil and condensate below US$ 50, the rate is 0%, and for prices of US$ 100, and above, up to US$150, the rate is 5%, and above US$150 (and above), the royalty rate is 10%, per barrel, as per the table below.

**Royalty by Price**

A close-up of a barrel

Description automatically generated

The price is on a linear interpolation basis. For instance, an oil price of US$ 75 per barrel would mean a royalty of 2.5%[[686]](#footnote-685).The price benchmarks are to be adjusted yearly for inflation by adding 2% per year to the benchmark price. Royalty derived by price shall be for the credit of the Nigerian Sovereign Investment Authority. Where any royalty due and payable under the PIA is not paid within two (2) months after the month in which the royalty is due, then it qualifies to be a debt and shall attract: (a) 10% penalty plus LIBOR (foreign currency) and NIBOR (local currency) plus 10% basis points, (b) subsequent defaults: first day of default - N10m or US$ equivalent, or N2m /US$ equivalent for each day the failure continues. There is however no royalty by price for gas and frontier acreages.

The terms and the characterization of royalty under the PIA are more precise and this makes for clarity. Gas production receives special attention to incentivize production and domestic gas utilization and capacity building. The penalty for non-payment of due royalty, any unpaid royalties are a debt owing after 30 days from the due date and shall be subject to interest at prevailing CBN rates, unlike the case of delayed price review and royalties under the PPTA as amended by the PSC Act[[687]](#footnote-686). The PIA also states that where a single field covers two or more PMLs, the royalty rate shall be determined based on total production from the field. Where a field is located partially onshore and in shallow water, or partially in shallow water and deep offshore areas, the weighted average royalty shall be calculated in accordance with the Regulations released by the Commission from time to time[[688]](#footnote-687).

**9.5 MARGINAL FIELDS FISCAL REGIME AND TAXATION**

The PIA has also brought structure and more clarity with respect to the fiscal and tax regime for all marginal field operations and operators in Nigeria[[689]](#footnote-688). Under the PPTA fiscal regime, fiscal terms and taxation of marginal field operations had been fluid and uncertain for extended periods. Fiscal incentives were granted as specific awards to individual operators to develop the small or marginal fields. The PIA has addressed the concerns of operators, and the terms include the reduced tax and royalty rates[[690]](#footnote-689). Section 94 of the PIA defines a marginal field as ‘a field or discovery which is declared a marginal field prior to 1st January 2021, or which has been lying fallow without activity for seven years after its discovery prior to the effective date of the PIA’. The PIA identifies two categories of marginal fields. These are producing and non-producing marginal fields. The operators of producing marginal fields are to continue operating under the original royalty rates and farm out agreements. However, a conversion to a PML is required within 18 months from the effective date of the PIA. A PML is granted for a term of 20 years. For renewal of either the whole leased area or any part thereof, the holder of a PML can apply to the Commission, not less than 12 months before the expiration of the lease.

The non-producing marginal fields are fields declared as marginal fields prior to 1st January 2021, but which are not producing. Such fields are converted to a PPL. The PPL for onshore and shallow water acreages will be valid for a maximum period of 6 years, consisting of an initial exploration period of 3 years and an optional extension period of 3 years. For a marginal field that is not transferred to the government within 3 years of the effective date of the PIA, the holder of the oil mining lease would have to provide a field development plan or in the alternative, farmout the discovery with the consent of the Commission. Where the above-mentioned conditions are not fulfilled, the field will be relinquished. For the field transferred to the government, the Commission has the right to offer a PPL for the relinquished field under a fresh bid round[[691]](#footnote-690).

**9.6 TREATMENT OF FEES, FINES AND MULTIPLE LEVIES AND CHARGES UNDER THE PIA**

The interface of the PPT/PSC fiscal regime with the various special purpose taxes, indirect and transaction taxes and the incidences of multiple levies, charges, and fees present the challenge of increased tax burden due to the number of the taxes, levies, and charges. In addition to the uncertainties arising from ill-defined boundaries between taxes and imprecise charging terms in statute, there is also constitutional conflicts arising from the nature of the taxes. In some cases, these taxes also raise double taxation issues. The question also arises as to whether these taxes are deductible or non-deductible, and whether they are creditable against upstream PPT. The taxes include special purpose taxes such as the Tertiary Education Tax (TET)[[692]](#footnote-691), 3% Niger Delta Development Charge (NDDC) and the 1% Nigeria Local Content Charge (NLCC). The transaction taxes, levies and charges include the Value Added Tax (VAT), which is Zero-rated for petroleum,

The lack of clarity surrounding the treatment of these tax expenses, as well as the various other States and local council fees and charges, all contribute to creating uncertainty in the upstream petroleum tax system. There is some clarity on the treatment of the gas flare charges as it demands strict adherence to a gas flaring plan, along with gas utilization plans[[693]](#footnote-692). The PIA provides for the non-tax deduction of the charges and penalty[[694]](#footnote-693) paid for gas flared, and the non-cost recoverability of gas flared penalty for PSC petroleum operations. The PIA however fails to adequately provide for the treatment of the other indirect and transaction taxes imposed by the FG and the federating States. It fails to address the multiplicity of these taxes and essentially provides that expenses must be wholly, reasonably, exclusively, and necessarily (WREN) incurred for petroleum operations to be deductible for upstream petroleum tax. The WREN test of deductibility presents its own challenges, as the WREN test is subject to varying interpretation by the tax authority, the taxpayer, and by the Courts[[695]](#footnote-694), which have held that WREN test is cumulative and must satisfy the primary purpose of the statutory provision[[696]](#footnote-695).

The PIA has also introduced certain levies and charges which potentially present compliance challenges. The levies and charges include 0.5% of the wholesale price of petroleum products sold in Nigeria to fund the Regulatory Authority, and 0.5% of the wholesale price of petroleum products and natural gas sold in Nigeria to fund the midstream and downstream gas infrastructure fund[[697]](#footnote-696). The PIA, however, makes provision for the consolidation of costs for companies involved in upstream petroleum operations across terrains, for the purpose of CIT[[698]](#footnote-697) and for HT[[699]](#footnote-698) the consolidation of costs solely in respect of assets for licenses and leases granted in accordance with Section 267 of the PIA. On the other hand, contractors who execute PSCs or other contracts after the commencement of the PIA, would no longer be able to benefit from any fiscal stabilization clauses in such contracts, where the change affects the contractor with respect to the generally applicable taxes, such as WHT, CIT, TET and VAT, levies, or charges. It is to be noted that the treatment of multiple levies, charges and taxes imposed by the federating States and local councils remain a challenge by virtue of the nature of allocation of fiscal and taxing powers under the 1999 Constitution. To achieve more clarity and certainty in this respect would require either a Constitutional amendment or a definitive ruling by the SC, on the taxing powers of the constituent units of the federation, as the PIA fails to consolidate or clarify the treatment of these taxes and expenses for HT or CT purposes.

**9.7 PETROLEUM HOST COMMUNITY DEVELOPMENT PROGRAM**

The PIA has introduced a completely new sustainable community development program with the establishment of the Petroleum Host Community Development (PHCD)[[700]](#footnote-699) fund. The objective of PHCD fund is to foster sustainable prosperity within host communities and to protect the environment. This was non-existent under the PPTA. The IOC’s and the indigenous oil companies’ host community intervention programmes were seen as inadequate and unsustainable. Restiveness in the communities added to the costs and uncertainties in petroleum operations and taxation. It is, however, unclear whether the HCDTF[[701]](#footnote-700) financial obligation is additional to the 3% Niger Delta development levy, or whether it will be an aggregation of all the levies under the PIA.

**9.8 TAX ADMINISTRATION AND DISPUTE RESOLUTION PROCESS UNDER THE PIA**

The PIA generally adopts a simplified language. There are however still some ambiguities in the terms, concepts and provisions of the PIA. Terms such as “host community” and “frontier basin”, and requirements, such as “fiscal price’’ “cost price ratio’’ etc are not well defined. The existence of a two-tier income tax regime for upstream petroleum taxation, as well as the absence of clear basis and definition of allowances and the treatment of expenditure and income as they relate particularly to the calculation of HT and CT for different terrains and assets are avoidable sources of uncertainty. Also, the PIA defers to the Commission on the definition of “frontier basin” and to license holders on the definition of “host community.” The shared responsibility for setting the fiscal price, etc. potentially introduce distortions and create multiple and inconsistent understanding, interpretation of PIA terms[[702]](#footnote-701).

By virtue of the FIRS Act establishing the Federal Inland Revenue Service (FIRS)[[703]](#footnote-702), the administration of petroleum taxation is the primary responsibility of the FIRS. This position does not change with the enactment of the PIA. The challenge remains that of building a professional and efficient administrative structure for cost effective and transparent upstream petroleum tax administration, able to provide clear and precise tax information and circulars for the guidance of taxpayers based on verifiable taxing principles and terms. The arrangement between the Commission and the FIRS under the PIA creates overlaps of functions and potentially leaves room for conflict in practice and delayed collection of revenues and the administration of applicable regulations[[704]](#footnote-703). The good news is that the PIA properly defines the role of the TAT and the FHC[[705]](#footnote-704) in tax dispute resolution. This should facilitate the timely, transparent, and consistent judicial intervention and interpretation of legislation and therefore enhance understanding and clearer dispute resolution and compliance.

There is the need to build better understanding of the PIA regime as well as the professional expertise of the FIRS and the judiciary in taxation matters. The challenge in designing and drafting of tax legislation to correctly capture the taxing objectives and the key fiscal terms. This is evident in the PIA as it has taken close to two decades to enact the PIA. The areas of the PIA requiring building capacity to achieve clarity, certainty and responsiveness of the legislation and processes, include the new regulatory regime and management of the funds accruing under the PIA. A structured and well phased transition from the various fiscal and tax legislative systems under the PPTA as amended by the PSC Act, the CITA and other related taxation statutes affecting upstream petroleum taxation, would be a first step to achieving the appropriate level of certainty and stability in the PIA[[706]](#footnote-705). There is also the need to examine the interactionof the PIA provisions with other specific Tax Acts, such as Tertiary Education Tax (TET), and the Nigeria Local Development (NLCD) levy, etc, as these may require amendment in certain respects to align with the provisions of PIA generally and on specific subject matters [[707]](#footnote-706).

NNPC Limited has been established to operate as a [for-profit](https://en.wikipedia.org/wiki/For_profit" \o "For profit) oil company, and it remains to be seen how the creation of NNPC Ltd and the separation of operational and regulatory roles of NNPC[[708]](#footnote-707) will bring stability and certainty to petroleum taxation and administration under the PIA. Also, with the creation and effective functioning of the two regulatory agencies[[709]](#footnote-708) it is hoped that there will be a more effective regulation of the petroleum industry.

**CONCLUSION:**

The PIA represents a significant effort at comprehensively reforming the entire Nigerian petroleum industry. With respect to the Nigeria upstream petroleum industry, the PIA has essentially restructured and redefined the fiscal regime and revised the tax, as well as the royalty system by introducing a price-sensitive, asset-based royalty scheme. Upstream petroleum taxation is by a terrain and asset-based HT and CT to replace the multiple fiscal and tax rates and concession, and production and service contracts based PPT /PSC tax and royalty system.

The PIA provides for the separate taxation of upstream, midstream, and downstream oil and gas operations. With the clear identification of oil and gas as the basis of revenue recognition and taxation, and the introduction of HT and CIT to onshore and shallow water acreage and CIT to deep offshore upstream petroleum taxation respectively, there is more clarity to upstream petroleum taxation and administration. The separate application of gas fiscal incentives to the upstream and downstream gas operations, also enhances the clarity to the tax system. The reduced headline tax rates for offshore, shallow, and deep-water petroleum operations mean reduced ETR, especially for upstream petroleum taxation. There is however the need for more clarity in the interaction of HT and CIT and in the treatment of expenses and allowances for the different terrains and assets, notwithstanding the consolidation of cost across terrains and assets for both HT and CIT. The non-application of HT to deep offshore seeks to incentivise deep offshore upstream tax operations. This is seen as discriminatory against companies engaged in onshore and shallow water petroleum operations. The ambiguity on the tax treatment of decommissioning and abandonment cost under the PPTA has now been addressed by the PIA, and more clarity also brought to bear on marginal field taxation.

The attempt to keep the language of the PIA simple is welcome. However, competent rule-based legislative drafting is required to achieve accuracy and clarity of provisions, and deal with any ambiguities in aspects of the PIA legislative language. The transition from the old licencing and regulatory to the new licensing and regulatory regime, conversion of post PIA to PPLs and PMLs will need to be managed effectively. A Constitutional amendment to address the vertical fiscal imbalance under the 1999 Constitution, and the use of simple language and well-defined terms and concepts in the PIA will clearly enhance the understanding and interpretation of PIA provisions. Also, the clear definition of the functions and powers of the regulatory agencies will facilitate proper administration of the PIA and enhance compliance. An important development with the enactment of the PIA is the clarity provided with respect to the role of the TAT and FHC in the resolution of tax disputes. There is a need for a PIA response and review mechanism to make it fiscally and legislatively responsive to the needs and challenges of the energy industry, with price shocks and climate change policy demands.

**CHAPTER 10**

**SUMMARY OF RESEARCH, CONCLUSIONS AND RECOMMENDATIONS**

**10.1 SUMMARY OF RESEARCH**

This research has examined the thesis that achieving clarity, certainty and consistency in understanding and implementation in the Nigerian upstream petroleum fiscal and tax system, requires clearly defined fiscal and tax objectives. It also demands competent legislative drafting and law making in a dynamic industry such as the petroleum industry with domestic and international implications. The thesis further posits that sustained policy and legislative review and reform with the objective of evolving and creating a responsive, progressive, predictable, and competitive tax system is an absolute necessity. The research also interrogated the role and impact of the fiscal federalism and the resource ownership structure under the 1999 Constitution, and how these affect the clarity and certainty of tax obligations.

From the inception of commercial petroleum operations in Nigeria, the country relied on the old inherited legislation and policies. The Petroleum Act (PA) and Regulations (1968), as well as the Petroleum Profits Tax Act (PPTA 1958), were the principal legislations providing the legislative, regulatory and tax framework for petroleum operations in Nigeria. These legislations and regulations were always amended piecemeal from time to time[[710]](#footnote-709).

The research also posits that the central objective in designing the appropriate fiscal regime and tax system in most resource owning and producing countries is the need to acquire for the State a fair share of the wealth accruing from the extraction of that resource, whilst encouraging investors to ensure optimal economic recovery of the hydrocarbon resources. This requires alignment of the fiscal and tax policy objectives with the legislative framework and regulations for the profitable and competitive development and growth of the petroleum industry[[711]](#footnote-710).

The research observes that at the root of the uncertainty in fiscal and tax policy and taxation of upstream operations under the Petroleum Profits Tax Act (PPTA) as amended by the PSC Act, is the absence of, or lack of clearly and consistently defined fiscal and tax objectives which secure adequate petroleum revenues for government and profitable returns on investment to investors, as well as establishes a clear, predictable, competitive and responsive system which is understood and certain for all parties to comply to and discharge their obligations in line with the provisions of the legislation. Consequently, the failure to consistently articulate and translate the substance of the macro-economic policy into clearly defined fiscal and tax policy and legislation for petroleum operations, has meant that upstream petroleum taxation policy and taxation have been ambivalent and inconsistent, as they affect upstream petroleum tax legislation. These developments have resulted in poorly designed fiscal and tax policy objectives and legislation for the upstream petroleum industry[[712]](#footnote-711).

The alignment of fiscal and tax policy making and legislative drafting which results in the timely enactment of legislation will enhance clarity, responsiveness and the preciseness required in tax legislation. Also, the accurate determination of liability and the timely payments and collections[[713]](#footnote-712), will require real time review of issues and the structured reform of the legislation to achieve the changes required in the upstream petroleum tax system. Frequent changes in the tax system must however be avoided and mass changes introduced into tax legislation, sometimes described as “legislative inflation” must be avoided, so as not to create a “constant flux of tax laws”[[714]](#footnote-713), such as the inadequately conceived or drafted PSC Act amendment to the PPTA,

The comparative review of the UK and Canada petroleum tax system[[715]](#footnote-714) demonstrate the fact that a systematic evolution and development of a country’s petroleum fiscal, tax, legislative and regulatory framework, based on well-defined macro-economic and fiscal and tax objectives and the wider public finance considerations ensure the creation of clear, predictable, fit for purpose and competitive regimes. Also, important is the nature of the industry and developments in the international market and pricing[[716]](#footnote-715). This was not always the case for Nigeria, as discussed in chapter 5. The review of the results of the survey of stakeholder in the Nigeria petroleum industry[[717]](#footnote-716) basically affirm the impact of these variables as they affect the historical and sustained evolution and development of upstream petroleum taxation in Nigeria. With the focus of the FGN on raising as much revenue as possible, through high government take and the sales of crude oil from petroleum operations, the Nigerian fiscal and tax legislative process was ad hoc and piecemeal, and project driven[[718]](#footnote-717). The macro-economic objective of growing the industry, through structured evidence-based research and engagement of all stakeholders, where the government’s share of profits adjusts well to the realized profitability of the industry and its growth, and fair returns for investors, was therefore largely non-existent.

The black letter analysis of the relevant petroleum tax legislation further highlighted the need for competent rule-based legislative drafting[[719]](#footnote-718). The PIB enacted as the Petroleum Industry Act (PIA) in 2021, was the government’s delayed response to comprehensively review and reform the fiscal tax and regulatory framework, which historically was made up of several old fiscal and legislative arrangements[[720]](#footnote-719). Our analysis of the key fiscal and tax changes and terms introduced by the PIA also highlight the need for clarity of policy and taxing objectives in tax law making and legislative drafting, policy and legal certainty and clarity. These key changes are summarised in the following section.

**10.2 CONCLUSIONS AND RECOMMENDATIONS**

The common theme of this research is that the need to achieve clarity, certainty and consistency of understanding, interpretation and implementation of upstream petroleum taxation extends beyond being an aspirational concept or principle. It goes beyond the use of language and efficient rule-based legislative drafting. It is a matter of practical macro-economic importance for the governments and the taxpayers. It requires sustained engagement, objective research, clear and responsive fiscal and tax policy objectives setting, as well as maintaining a balance between the State revenue needs or aspirations with the ‘investors’ legitimate expectation for fair returns on investment.

The relevance of this study is that it commenced long before the enactment of the PIA. Many of the issues identified with respect to policy inconsistency and lack of clarity in fiscal and tax policy objectives, as well as clarity in tax legislative language and the distortions caused by project specific incentives etc. have been addressed in the new fiscal framework and tax legislation enacted as the PIA. The delay in designing the new policy framework and enacting the PIA, as well as the absence of a comprehensive reform of the fiscal and tax system for the upstream petroleum system created more confusion and conflicts for the investing community, leading to delays in investment decisions and several investors exiting the country. The piecemeal reviews and amendment further contributed to uncertainty, and lack of confidence in the PPTA regime, as amended by the PSC Act. The introduction of commercial and production sharing contract concepts into the PPTA fiscal regime only added to the confusion and revenue leakages and contentious issues which went for arbitration. The focus of the Petroleum Act (PA), and the PPTA on oil production was inadequate for the complex demands of the petroleum industry.

Nigeria also lacked a structured and sustained tax and fiscal policy making process, resulting in policy ambivalence and inconsistencies. Furthermore, there was a clear lack of technical capacity and financial resources and legal drafting competencies which all added to delayed reforms. The eventual enactment of the Petroleum Industry Act (PIA)[[721]](#footnote-720) after close to two decades of deliberations, amendments or variations to the terms of the PIB, highlighted some of the systemic and governance issues affecting the industry in Nigeria. As demonstrated in our analysis of the major changes introduced by the PIA in chapter 9, the PIA has brought more clarity to several issues and legislation affecting upstream petroleum taxation[[722]](#footnote-721). The PIA has also brought more clarity to the royalty system, marginal fields taxation and the tax treatment of expenses, and decommissioning and abandonment (D&A) expenditure[[723]](#footnote-722). Specifically, the PIA has effected the following changes and brought more clarity and certainty to upstream petroleum taxation:

* The PIA has created a new basis for the taxation of oil and gas, different from what existed under the PPTA as amended by the PSC fiscal regime. The focus of the PPTA was on oil. The attempt to leverage oil to develop gas taxation created many distortions and gaps in the treatment of revenue and expense. The new basis introduced under the PIA eliminates the distortions by separating the tax treatment of oil and gas expenditure and income treatment for HT and CIT. Additionally, the PIA has established the fiscal basis for the separate arm’s length taxation of the upstream, midstream, and downstream assets. Gas development and production expenditure and income will now be taxed under CITA provisions, but with the subsisting incentives to encourage upstream, midstream, and downstream gas development and production.
* The two-tier income tax regime, i.e. hydrocarbon tax (HT) and company income tax (CIT), for upstream petroleum taxation, facilitates the clarification and the ascertainment of chargeable revenue for HT and CIT purposes and broadened the basis of tax deduction of expenditure incurred for upstream petroleum operations to wholly, reasonably, exclusively and necessarily (WREN) incurred expenditure[[724]](#footnote-723). The WREN test does not however resolve the issue of uncertainty highlighted with the previously existing wholly, exclusively and necessarily (WEN) incurred test under the PPTA. Both these tests of deductibility remain questions of fact, which in most cases are subject to varying interpretation and views by the tax authority, the taxpayers and the court[[725]](#footnote-724).
* The PIA, however, fails to resolve the issue of tax treatment of certain special purpose taxes and charges for upstream petroleum taxation. This remains a distorting factor and needs to be addressed as either tax deductible or tax creditable expense.
* Deep Offshore petroleum operations are exempt from HT and the change in the allowances and fiscal incentives granted under the PIA are aimed at encouraging investment in the Deep Offshore. It is, however, seen as discriminatory against the companies operating onshore, and small companies with potential for distortions and abuse.
* The PIA also has achieved the much-needed clarity with respect to the treatment of decommissioning and abandonment costs. The effect of the tax treatment of decommissioning cost on investment planning and decision making can now be better managed by investors.
* The marginal fields taxation regime is also much more certain. A special marginal field regime is established by the PIA, with a revised tax rate. Investment and development of small fields can be better managed and encouraged.
* The PIA also retains the Royalty regime with amendments to make it price, terrain and production reflective, in addition to the various special purpose taxes, charges, and levies.
* The simplification of PIA language is helpful[[726]](#footnote-725). However, building legislative drafting competency is necessary as it is hardly possible to name another area of law[[727]](#footnote-726), where an erroneously constructed phrase, a gap between a thought and its textual expression, an incorrectly or inappropriately used word or term can lead to grave consequences as in the sphere of taxation, and go to the root of uncertainty in the legal and tax system. The absence of statutorily defined terms and concepts is an area that needs improvement in the PIA

The PIA properly identifies need to create a simple upstream petroleum tax regime which generates adequate revenues for the country and permits profitable or fair financial returns for the investors and shareholders. However, how the government responds to changes and proactively addresses fiscal and legislative review and reform remains a challenge that will impact the effectiveness of the new fiscal and legislative regime. The review process to deal with new developments, financing arrangements and technologies, as Nigeria strives to attain energy security and funding for development requires commitment from government and the fiscal federalism under the 1999 Constitution would require decentralization. The pressure for revenue capture by all tiers of government will continue to present fiscal and tax challenges, unless and until there is more clarity under the Constitution on the fiscal and legislative responsibility of the federating entities.

The objective for simplification of the tax system for petroleum operations has made significant progress under the PIA. However, under the PIA, the interaction of the general Corporate Income Tax Act (CITA) with Hydrocarbon Tax Act (HT), and modified Royalty regime for upstream petroleum operations is still fragmented with respect to the fiscal regimes, and the income and profit tax basis applicable to different terrains, assets and category of companies operating onshore, and offshore and frontier basin etc. These fragmentations potentially will continue to create distortions, arbitrages, and gaps in the treatment of ascertainment of revenue, chargeable income and expenses, as well as the consistent application and understanding of taxing principles, understanding, interpretation and compliance for both the taxpayer and the tax authority.

It is recommended that a single corporate income tax regime for petroleum operations, in addition to a royalty regime which yields early revenues may go a long way to simplifying the upstream petroleum tax system. There are various ways to do this. One example could envisage a progressive income tax and a sliding scale royalty in the case of concessionary systems; or a progressive government take linked to petroleum prices or project rate of return in the case of production-sharing arrangements.

The PIA is silent on the treatment of the special purpose and transactions taxes, as well as the incidence of multiple taxes, charges and levies. Barring a Constitutional amendment to address the over-centralised fiscal federalism under the Nigerian Constitution, as well as re- define and delineate properly the fiscal responsibilities and taxing powers of the FG and the States and local government councils in the federation, a deliberate policy change would be required to either eliminate multiple taxes and levies, or consolidate all of these special purpose taxes which impact upstream petroleum taxation and increase the cost of operations. This is an area requiring further research, and legislative amendment as it pertains to uncertainties for petroleum taxation.

Finally, it is recommended that tax certainty for upstream petroleum taxation in Nigeria should be a sustainable, robust and flexible framework of rules and procedural standards, geared towards providing conditions suitable for investment and the profitable exploitation of the petroleum and related resources by the country. The system should render adequate or fair returns to the country and the investors. It should reflect clearly articulated fiscal policy and tax objectives of the resource owners, with well-defined tax obligation for all parties. The tax laws and regulations should be clear, and enhance the capacity of the tax and customs administration, to administer and the taxpayer to discharge their obligations. The system should also provide for the swift and transparent mechanisms for dispute resolution. The PIA has attempted to achieve many of these broad objectives and a simplified language, which will facilitate administration, although there are noticeable gaps and areas of fragmentation in the treatment of assets and revenue.

Clear, accurate, coherent legislation does not necessarily guarantee tax certainty if it is not accompanied by a coherent, fair, timely and efficient implementation. Ineffective and unpredictable implementation, where there is a gap between the tax legislation and its application, is likely to increase uncertainty. Sustained, timely and responsive structured policy and tax law review and reform, as the UK experience and the Canadian integrated evidenced based and flexible approach demonstrate, is required for continued clarity, certainty and consistency (CCC) in designing, understanding, interpretation and implementation of tax legislation, as well as predictability for planning, administration and compliance.

**DATE OF STATEMENT OF LAW FOR THE RESEARCH: DECEMBER 2023**

**BIBLIOGRAPHY**

BOOKS

ARTICLES AND JOURNALS

LIST OF LEGISLATIONS AND REGULATIONS

LIST OF CASES AND JUDICIAL DECISIONS

LIST OF AGREEMENTS AND POLICY DOCUMENTS

**APPENDICES**

APPENDIX I – SURVEY QUESTIONNAIRE

APPENDIX II – SURVEY RESPONSE

APPENDIX III – NATIONAL TAX POLICY 2012 & 2016

APPENDIX IV – NATIONAL OIL AND GAS POLICY 2016 & 2017

APPENDIX V – PETROLEUM INDUSTRY BILL 2008 - 2020

APPENDIX VI – NATIONAL PETROLEUM POLICY -approved by FEC July 2017

**BIBLIOGRAPHY**

**BOOKS**

Abbas Ghandi and Cynthia Lin, *Oil and Gas Service Contracts around the World: A Review* (University of California, United States, 2013)

Abdulrazaq M, *Cases and Materials on Nigerian Taxation* (Eastern Book Company 2016)

Abdulrazaq M, *Judicial Review in Nigerian Taxation* (Maples & Temples 1997)

Abdulrazaq M, *Nigerian Revenue Law* (Lagos: Malthouse Press Ltd 2005)

Abdulrazaq M, *Nigerian Tax Guide and Statutes* (Lagos: Chartered Institute of Taxation of Nigeria 2002)

Abdulrazaq M, *Nigerian Tax Offences and Penalties* (Batay Law Publication Ltd 1993)

Abdulrazaq M, *Principles and Practice of Nigerian Tax Planning and Management* (Batay Law Publications Ltd 1993).

Abdulrazaq, M.T., Taxation System in Nigeria, (Gravitas Legal & business Resources Ltd), Published 2016.

Adam Smith, *The Wealth of Nations* (Thrifty Books 2009)

Adamu Jibir and Chandana Aluthge, Fiscal Policy Operation in Nigeria: Trends, Magnitude and

Challenges, Publisher: KSP Books, Turkey ISBN: 978-605-7602-84-8, June 2019,

Aderinto W, *Principles and Practice of Taxation In Nigeria* (Ibadan: Codat publications 2005)

Adesola S, *Income Tax Law and Administration In Nigeria* (Ile-Ife: University of Ife Press 1986)

Adeyemo O, *A Guide to the Taxation of Oil Companies in Nigeria* (1st edition, Routledge 2007).

Ani A, Abdullahi Z, Popoola M and Uche R, *Companies Income Tax and Petroleum Profits Tax in Nigeria* (Ibadan: University Press 2007)

Ariwodola J, *Companies Taxation in Nigeria Including Petroleum Profits Tax* (3rdedn, J. A. A. Publishers 2000).

Arogundade J, *Nigerian Income Tax and Its International Division* (Ibadan: Spectrum Books Limited 2005).

Arowomole S, and Oluwakayode E, *A Classic Introduction into Nigerian Taxation* (Lagos: King Julius Publishers 2006).

Arowomole S, and Oluwakayode E, *Administration of Petroleum Profit Tax in Nigeria* (Lagos: King Julius Publishers 2006).

Atsegbua L, *Oil and Gas Law in Nigeria: Theory and Practice* (3rd edn, Fifters Lane Publishers 2012).

Atuokwu C, *Taxation for a Sustainable Development in Africa – A Case Study of Taxation in the Nigerian Oil and Gas Sector* (2009) ISODEC 1.

Ayua I, *Nigerian Tax Laws* (Ibadan: Spectrum Books 1996).

Baiyewu F, *Nigerian Taxation: A Practical Approach* (1st edn, Lagos: International Publishing 2006)

Benson, E.J., Hon. Minister of Finance, *Proposals for Tax Reform* (Ottawa: Queen's Printer, 1969) at 64.

Burgess, Anthony, *Language and Languages, A Mouthful of Air* (Vintage 1993) pp. 1- 362.

Cameron, Peter D. *Oil, Gas and Mining: A Sourcebook for Understanding Extractive Industries* (World Bank Group, Washington DC, USA, 2017) 1-321.

Christian Biddard, *The Ricardian rent theory: an overview* (Centro Sraffa Working Papers No. 8, November 2014).

Christopher S, *The Oil and Gas Law Review* (5th edn, Gideon Roberton 2017).

Collier P, *The Plundered Planet: Why We Must- And How We Can- Manage Nature for Global Prosperity* (London: Allen Lane 2010).

Corley T M, *Oil and Gas Law of Taxation* (4th edn). (Hornooks) - <https://www.lawbookexchange.com/pages/books/37643/>.

Daniel, Philip; Keen, Michael; McPherson, Charles (eds.), *The Taxation of Petroleum and Minerals* (Routledge Publishers, 2010).

Daniels Ayoola, *Nigerian Laws, Cases and Materials on Oil and Gas* (2008) 1 Petgas Global Consulting Limited.

Deak, Csaba, *Rent Theory and the Price of Urban Land: Spatial Organization in a capitalist economy* (PhD Thesis submitted to the University of Cambridge, King’s College, University of Cambridge, Cambridge, United Kingdom, March 1985) 1-289.

Declan H, Duruigbo E. *Nigerian Oil and Gas Law: Cases, Commentaries, and Material* (Lagos: Westhill Publishers 2018).

[Doern, G. Bruce](https://archive.org/search.php?query=creator%3A%22Doern%2C+G.+Bruce%22), *Power Switch: Energy Regulatory Governance in the Twenty-first century (2003)* Toronto : University of Toronto Press,

 Easson A, *Cases and Material in Revenue Law* (Sweet and Maxwell 1973).

Eromosele, Victor E. *Energy Insight Nigeria, ‘‘Raising Industry Performance: Some Global Lessons’’, by Dapo Okubadejo,* pp. 23-25, (2020 special edition).

Etikerentse G, *Nigerian Petroleum Law (*Lagos: Dredew Publishers 2004).

Fanchi, John and Christiansen, Richard, *Introduction to Petroleum Engineering* (First Edition, John Wiley & Sons, 2016)

Federal Inland Service Nigeria, *Comprehensive Tax History of Nigeria* (1st edn, Safari Books Ltd 2012).

Fuller L, *The Morality of Law* (New Haven, Yale University Press, revised edition, 1973).

Gruber J, *Public Finance and Public Policy* (2nd edn, Worth Publishers 2007), https://www.abebooks.com/book-search/isbn/9780716766315

Haig R, *The Concept of Income - Economic and Legal Aspects* (Columbia University Press 1921).

Hart H L, *The Concept of Law* (Oxford University Press 2015).

Helliwell, J.F. et al., *Oil and Gas in Canada: The Effects of Domestic Policies and World Events* (Toronto: Canadian Tax Foundation, 1988).

HM Treasury and HM Revenue & Customs, *Tax Policy Making: A New Approach* (London: HM Treasury, June 2010).

HM Treasury, *The New Approach to Tax Policy Making: A Response to the Consultation* (London: December 2010).

HM Treasury, Matthew Ray, *Oil and Gas Fiscal Regime Review*: call for evidence – Gov.UK

Jackendoff Ray, *Patterns in the Mind* (Basic Books 1994)

Johansson A, *Tax and Economic Growth* (Organization for Economic Co-operation and Development 2008).

Kachikwu E, *Legal Issues in the Nigerian Petroleum Industry* (Law Publishing and Conference Services Ltd 2016).

Kay, John & King, Mervyn, *Radical Uncertainty-Decision Making beyond the Numbers* (March 2020).

Knight, Frank H. *Risk Uncertainty and Profit*, (May 2014). en.wikipedia.org/wiki/Knightian uncertainty.

Lee, Natalie, (General Editor) *Revenue Law-Principles and Practice* (27th edn.) Bloomsbury Professionals.

Lowe J, et al, *Cases and Materials on Oil and Gas Law* (6th edn. West Publishing Co 2013).

Lugard L, *The Dual Mandate in British Tropical Africa* (Taylor and Francis 2013).

Maguire, Steven. *Federal Deductibility of State and Local Taxes* (2015) Congressional Research Service (Oxford University Press 1950) 235.

Marc Blaug, *Economic Theory in Retrospect* (Third Edition, Cambridge University Press, Cambridge, United Kingdom, 1978).

Moore M, Prichard W, and Fjeldstad O, *Taxing Africa: Coercion, Reform and Development* (Zed Books 2018).

Morse G, and Williams W, *Davies: Principles of Tax Law* (5th edn, Sweet and Maxwell 2004)

Nakhle C, *Sharing the Oil Wealth- A Study of Petroleum Taxation Yesterday, Today and Tomorrow* (New York: Routledge 2008).

Nakhle, Carole, *"Minerals, Chapter 4: Petroleum Fiscal Regimes: Evolution and Challenges,"* in The Taxation of Petroleum and Minerals: Principles, Problems and Practice. Edited by Philip Daniel, Michael Keen, and Charles McPherson, Publisher: Routledge.

Ndekwu E, *Tax Structure and Administration in Nigeria* (Ibadan: Nigerian Institute of Social and Economic Research 1988).

Nwabueze, Benjamin Obi. *Federalism in Nigeria under the Presidential Constitution of 1979* (Sweet & Maxwell).

Ochei B, *The Nigerian Taxman’s Book* (Pyram Publishers Educational 2010).

Ogunsakin Tunde, *A Review of Effective Tax Regime in Nigeria* (Dartford: Xlibris UK 2017).

Ojo S, *Elements of Tax Management and Practice in Nigeria* (Lagos: Sagribra Tax Publications 1998).

Okauru I, *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria* (Oxford: Safari Books Ltd 2012).

Okpe I, *Petroleum Profits Tax in Nigeria* (Enugu: Joebest Books 2003).

Ola C, *Nigerian Income Tax Law and Practice: Incorporating Income Tax Laws Relating to Personal Income Tax Law, Partnership Tax Law, Companies Income Tax Law, Petroleum Profits Tax Law, Capital Gains Tax Law, Capital Transfer Tax Law and Guidelines to a Tax System Under the Presidential System of Government with Accountancy and Decided Cases Illustrations and a Supplement.* (London: Macmillan 1985).

Ola C, *Income Tax and Practice in Nigeria* (Dalak Prints and Pak Ltd 1999) 1-10.

Ola C, *Income Tax Law for Corporate and Unincorporated Bodies in Nigeria* (Ibadan: Heinemann Educational Books 1984) 1-9.

Olakanmi J, (2012) *Compendium of Tax Laws* (2nd edn, Abuja: Lawlords Publishers 2012).

Olisa M, *Nigerian Petroleum Law and Practice*. (2nd edn, Jonia Ventures Limited, Lagos 1997).

Omorogbe Y, *Oil and Gas Law in Nigeria* (Nigeria: Malthouse Press 2003).

Orojo J, *Company Tax Law in Nigeria* (London: Sweet and Maxwell 1979).

Osimabale A, *Principles and Practice of Taxation* (Nigeria: Klinx Press 2008) 1-30.

*Royal Commission Report Respecting the White Paper on Tax Reform* (Ottawa: Queen's Printer, 1970) at 74.

Ricardo, David. *Principles of Political Economy and Taxation* (Third Edition, Batoche Books, Ontario, Canada, 1821).

Schätzl L, *Petroleum in Nigeria* (Ibadan: Oxford University Press 1969).

Seymour, A., *The Oil Price and Non-OPEC Supplies, Oxford Institute for Energy Studies Papers on the World Petroleum Market* (Aldgate Press, 1990).

Simons H, *Personal Income Taxation: The Definition Of Income As A Problem Of Fiscal Policy* (University of Chicago Press 1938).

Somorin O, *Evolution of Nigerian Tax Laws: An Overview* (Lagos: Chartered Institute of Taxation 2015).

Soyode L, and Kajola S, *Taxation Principles and Practices in Nigeria* (Ibadan: Silicon Publishing Company 2006)

Stanford Encyclopedia of Philosophy, *Law and Language’* (Stanford University, USA, First published 5 December 2002 and revised 15 April 2016) (online) <https://plato.stanford.edu/entries/law-language/> accessed 27 March 2019.

Stark, Jack.  *The Art of Statute, Chapter 1 – Background on Language.* p, xi.

Strawson, Peter Fredrick.  *On Referring* (Oxford University Press 1950).

Tiley, John (assisted by Loutzenbiser). Revenue Law, (6th Edn. 2008), Hart Publishing.

Wheare, K. C., *Federal Government* (4th edn, London: Oxford University Press 1963).

White, James Boyd, *The Legal Imagination* (Abridged edn, Chicago: University of Chicago Press 1985).

Whitehouse C, Watson L, Lee N, & Blakeley Paul, *Revenue Law -Principles and Practices, Butterworths. (1995).*

**ARTICLES AND REPORTS**

Abba Kolo & Thomas W. Walde, *Renegotiation and Contract adaptation in the international investment projects: Applicable Legal Principles & Industry practices,* Transnational Dispute Management, Volume 1, Issue 01, February 2004.

Abbas Ghandi and Cynthia Lin, *Oil and Gas Service Contracts around the World: A Review* (University of California, United States, 2013) 1-17.

Abdulrazaq M, *Judicial Discretion and the Interpretation of Taxing Statutes in Nigeria* Obafemi Awolowo University Law Journal (2002).

Abere J, *Taxation of PSC’s: Salient Issues Arising from the Application of the Petroleum Profits Tax Act*. (Oil and Gas Business in Nigeria and Taxation (2015) [Unpublished].

ACCA, *Tax Principles from Adam Smith to Barack Obama* (2009) Association of Chartered Certified Accountants (ACCA) Policy Paper <http://www.nctbpu.org> accessed 20 September 2018.

Adegbie F, and Fakile S, *Petroleum Profit Tax and Nigeria Economic Development* (2011), 11 *International Journal of Research in Commerce and Management* 17.

Adeleke, Olumide Ogunnoiki, *Federalism as a Political Ideology and System of Federal Government: The Theoretical Perspectives.* (2017) 3(9) *International Journal of Advanced Academic Research* 53-80.

Adeyeri, Olusegun, Adejuwon, Kehinde Davide, *The Implication of British Colonial Economic Policies on Nigeria; International Journal of Advanced Research in Management and Social Sciences,* Vol. 1 | No. 2 | August 2012.

Ahmed Isau, *Transfer Pricing: The Nigerian Perspective*. (2014) 2(2) International Journal of Accounting and Taxation 23-28.

Aigboduwa, Joseph and Oisamoje, Michael, *Promoting Small and Medium Enterprises In The Nigerian Oil and Gas Industry* (2013) 9(1) *European Scientific Journal* 244-261.

Ajayi K, *Financing Oil and Gas Projects in Nigeria: Legal and Commercial Issues.* (2003), 1 *Energy & Natural Resources Annual* 78-95, 79.

Ajayi S, and Akin-Moses B, *The National Petroleum Fiscal Policy – Old Wine in a New Bottle?* (2018) <https://www.pwc.com/ng/en/assets/pdf/tax-watch-march-2017-the-national-petroleum-fiscal-policy.pdf> accessed 4 September 2018.

Akanle O, *The Government, the Constitution & the Taxpayer* in M.A Ajomo and O. Akanle (eds), *Tax Law and Tax Administration in Nigeria* (Lagos: N.I.A.L.S 1991).

Akinrele A, *Nigeria Oil and Gas Law.* Oil, Gas & Energy Law Intelligence (2005).

Alatoye A, *Petroleum Profits Tax’ Presentation made to cadet officers of the Economics and Financial Crimes Commission (EFCC),* <https://www.slideserve.com/alyssa-duke/tax>.

Alexander Malden, *Nigeria’s Oil and Gas Revenues: Insights from New Company Disclosures* (Natural Resource Governance Institute, December 2017).

Alike E K, *Nigeria Lost $60Bn To Non-Enforcement of PSC’s With Oil Majors*. *This Day* (Nigeria August 7, 2017).

Alm, James, *Does an Uncertain Tax System Encourage “Aggressive Tax Planning”*?’ (Tulane Economics Working Paper Series, Working Paper 1403, February 2014) 1-24.

Amadi, O.S., Echem, M.O. and Nwoko M.C.O, *The Theory and Practice of Federalism: A Critical Analysis of History and Global Trend*’ (2017) 1(7) *International Journal of Scientific Engineering and Science,* 42-49.

Amoako-Tuffour J Owusu-Ayim, *An Evaluation of Ghana’s Petroleum Fiscal Regime*’ [2010] *Ghana Policy Journal* 7.

Andersen Tax ‘*Uncertainty in the Nigerian Fiscal Regime: The Case of Royalty Payment in the Oil and Gas Industry’* (Andersen Tax Nigeria, Lagos, Nigeria, 14 August 2018) 1.

Angell Claire*, Oil and gas fiscal regime: the plan for reform,* Tax Journal.com, 11 December 2014.

Anochie Uzoma and Onyinye Mgbemena, *Evaluation of Some Oil Companies in The Niger Delta Region of Nigeria: An Environmental Impact Approach*. (2015) 3(2) *International Journal of Environment and Pollution Research* 13-31.

Anthony D’Amato *Legal Uncertainty* (1983) 71 *California Law Review* 1-55.  
Apere Oyinpreye, *Impact of Crude Oil on Nigeria’s Fiscal Policy Formulation*. (2017) 5(3) *European Journal of Research in Social Sciences* 74-83.

Aregbesola I, *Nigeria’s Oil and Gas Industry: The Challenges and Prospects*. (10 April 2014) <[www.peoplesdailyng.com](http://www.peoplesdailyng.com)> accessed 20 September 2018.

Arleta Osmann, *Decommissioning Relief Deeds and their impact on the UK oil and gas industry,* University of Aberdeen. [abdn.ac.uk/business/documents/osmann.pdf](https://www.abdn.ac.uk/business/documents/osmann.pdf)

Arowolo O, *Moving Towards Responsible Tax Administration in Nigeria*’(2007) *Tax Notes International* 1145-1147.

Arowomole S, *Petroleum Profits Tax Computation in Nigeria* (2004), Global Journal of Accounting, Department of Accounting. Faculty of Business Administration (University of Lagos 2004).

Asada D, and Olong M, *Appraising Taxation and the Nigerian Oil Industry’* in Agbonika, J. A., *Topical Issues on Nigerian Tax Laws and Related Areas* (Ibadan: Abada Press Limited 2015) 184-186.

Asagunla Michael, and Oyeyemi Agbede, *Oil Revenue and Output Growth in Nigeria’* (2018) 4(6) International Journal of Economics and Business Management 65-74.

Association of Chartered Certified Accountants (ACCA) *Foundations for a Sound Tax System: simplicity, certainty, and stability* (The Association of Chartered Certified Accountants, Think Ahead, June 2015) 1-12.

Association of Chartered Certified Accountants, *Certainty in Tax* <<http://www.accaglobal.com>> accessed 20 September 2018.

Avi-Yonah, S, *‘Three Goals of Taxation’* (2006) 1 *Tax Law Review* 1.

Aye, Israel, Alakija L, Okhilua C, and Onoji E, Chapter on Nigeria in ‘*The Oil and Gas Law Review* (4th edn, Gideon Roberton 2016), p. 206-218.

Ayodele Odusola, *Tax Policy Reforms in Nigeria,* Research Paper No. 2006/03. UNU World Institute for Development Economics Research (UNU-WIDER), Katajanokanlaituri 6 B, 00160 Helsinki, Finland.

Bast, Elizabeth, Doukas, Alex, Pickard, Sam, van der Burg, Laurie; Whitley, Shelagh (November 2015). *Empty promises: G20 subsidies to oil, gas and coal production”* (PDF). Overseas Development Institute (ODI). P. 1.

Berger Daniel, *Taxes, Institutions and Local Governance: Evidence from A Natural Experiment in Colonial Nigeria’* (2009), <https://www.researchgate.net/profile/Daniel_Berger>.

Bickley J,*‘A Value-Added Tax Contrasted with A National Sales Tax’* (003) Congressional Research Service <http://www.ncseonline.org/nle/crereports/03May/IB92069.pdf>, accessed 30 April 2018.

Biddard, Christian, The *Ricardian rent theory: an overview*’ (Centro Sraffa Working Papers No. 8, November 2014) 1-39.

Bird Richard, Wilkie, Scott. *Designing Tax Policy: Constraints and Objectives in an Open Economy*’ (International Center for Public Policy Working Paper 12-24, International Center for Public Policy, Andrew Young School of Policy Studies, Georgia State University Atlanta, Georgia, United States of America, 2012) 1-44

*Blank, J and Osofsky, L.* *Simplicity Lost,* Pittsburgh Tax Review, 2023, UC Irvine School of Law Research Paper No. 2022-29, UNC Legal Studies Research Paper No. 4201658- where the authors stress the increasing complexity of tax law.

Blaug Marc, *Economic Theory in Retrospect* (Third Edition, Cambridge University Press, Cambridge, United Kingdom, 1978) 91-112.

Bolodeoku I, *Centralization of Tax Administration in Nigeria: The Legal and Efficiency Considerations.* (2008) 37 *Common* *Law World Review* 175-190.

Bosc M, and Andre G, *House of Commons Procedure and Practice* (2nd edn, 2009).

Bowman S W, *Interpretation of Tax Legislation: The Evolution of Purposive Analysis* (1995) 43(5) *Canadian Tax Journal* 1167-1189.

BP Statistical Review of World Energy, *Analysis: MPR Petroleum Policy Team’* (2016).

Brain J, *Statutory Interpretation: Some Thoughts on Plain Meaning*’ (1998) Canadian Tax Foundation Conference Report, 6:1-6:35.

Brian Ernewein and Nancy Horsman*,* *The Process for Making Tax Policy in Canada; Canadian tax journal / revue Fiscal Canadienne (2013) 61:4, 1031 – 42.*

Brown Jason, Fitzgerald Timothy, and Weber Jeremy, *Does Resource Ownership Matter? Oil and Gas Royalties and the Income Effect of Extraction*. (2019) Journal of the Association of Environmental and Resource Economists, 1-49.

Cameron D P, *Property Rights and Sovereign Rights: The Case of North Sea Oil,* New York, Academic Press Inc. (1983).

Canada, *Royal Commission on Taxation,* *The Taxation of Mineral Extraction by M.W. Bucovetsky,* Study No. 8 (Ottawa: Queen’s Printer, 1967).

Cape J, *Things Still Fall Apart in a Well-Designed Tax System’* (2018) 89, Tax Notes International 1273-1276.

Chartered Institute of Taxation (CITN), *Nigerian Tax Guide and Statistics*’ (1st edn Lagos: CITN 2002).

Chartered Institute of Taxation of Nigeria (CITN) *Position on The Conflicting Decisions on The Federal High Counts on The Constitutionality or Otherwise of The Tax Appeal Tribunal*’ (2014).

Chatham House *Next Generation Nigeria: What is restructuring and does Nigeria need it*?’ (Chatham House, The Royal Institute of International Affairs, London, United Kingdom, 21 September 2017) 1-8.

Chete, L.N., Adeoti, J.O. Adeyinka, F.M. and Ogundele O ‘*Industrial development and growth in Nigeria: Lessons and challenges’* (Brookings Institution, African Development Bank Group, Learning to Compete, Working Paper 8, United States, 2016) 1-40.

Chukwueyem Rapu et al, *Analysis of Energy Market Conditions in Nigeria* (Central Bank of Nigeria, Federal Capital Territory, Abuja, October 2015).

Cook E, Lewis, and Nellen T, *Taxing Principles for The Digital Age’* (2017) Journal of Accountancy, (May 2017). www.sjsumstjournal.com.

Crabbe, Vincent Cyril*, Drafting in Developing Countries: The Problem of Importing Expertise’* (1992) 4 *African J. Int’l Comparative Law* 630 – 648.

Crandall-Hollick M, *‘Higher Education Tax Benefits: Brief Overview and Budgetary Effects, The American Opportunity Tax Credit: Overview, Analysis, And Policy Options*’, Congressional Budget Office, ‘The Budget and Economic Outlook:’ (2013) <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43907-BudgetOutlook.pdf> accessed 10 August 2018.

D'Amato, Anthony *Legal Uncertainty*’ (1983) 71 California Law Review 1-55.

Davis J, Ossowski R, & Fedelino A, *Fiscal Challenges in Oil-Producing Countries: An Overview’ in JM Davis, R Ossowski & A Fedelino (eds) Fiscal Policy Formulation and Implementation in Oil Producing Countries* (Washington: International Monetary Fund, 2003) <http://www.imf.org/external/pubs/ft/dp/2013/dp1302.pdf>.

Deloitte, *Doing Business in the Nigerian Oil & Gas Industry – Fiscal Compliance & Incentive Considerations (2*) (2014), Deloitte Inside Tax Week 48 Publication, <[www.deloitte.com/ng](http://www.deloitte.com/ng)> accessed 20 September 2018

Deloitte and Touche, *Implications of Nigeria’s Draft Petroleum Fiscal Policy* (Deloitte Tax & Regulatory Services, Akintola Williams Deloitte, Lagos, Nigeria, 29 March 2017) 1-5

Department of Finance of the Government of Canada, Consultation *on Ensuring the Effectiveness of Registered Disability Savings Plans* (2011) <http://www. n.gc.ca/activity/consult/rdsp-reei-eng.asp #Ensuring> accessed 8 August 2018

Department of Finance of the Government of Canada, *A New Beginning: The Report of The Minister of Finance’s Expert Panel on Financial Security for Children with Severe Disabilities*’ (2006).

Department of Finance of the Government of Canada, *Consultations on The Tax Rules for Employment Profit Sharing Plans’* (2011) <http://www. n.gc.ca/activity/consult/epsp-rpeb-eng.asp#a1> accessed 8 August 2018.

Department of Finance of the Government of Canada, *‘Report of The Technical Committee on Business Taxation*’ (1998).

Department of Finance of the Government of Canada, ‘*Tax Incentives for Scientific Research and Experimental Development Consultation Paper*’ (2007).

Department of Finance of the Government of Canada, ‘*The Taxation Of Corporate Groups Consultation Paper*’ (2010).

Dike M, *An Overview of The Nigerian Tax System: Implications for Foreign Investors’* (2014), <[https://www.citn.org/...files/tax.../e0cff10556112d9b022e42afe8aab9ad2dd7f618.pdf> accessed 1 September 2018](https://www.citn.org/...files/tax.../e0cff10556112d9b022e42afe8aab9ad2dd7f618.pdf%25252525253e%252525252520accessed%2525252525201%252525252520September%2525252525202018)

Due J, *Income Taxation in Tropical Africa* (1962) British Tax Review (BTR) July – August, 226

Edori D S, Edori I S, and Idatoru A R, *Issues and Challenges Inherent in the Nigerian Tax System’* (2017) 2(4) *American Journal of Management Science and Engineering* 52-57.

Ehinomen C, Babatunde A, and Ogundare S, *The Restructuring of the Nigerian Economy, and the Nigerian Oil Sector Earnings Nexus’* (2014). Available at SSRN, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2532032>.

Elaigwu, Isawa, *Nigeria: The Current State of the Federation – Some Basic Challenges* (Paper presented at International Conference on Federalism in Honour of Professor Ronald Watts, organized by the Institute of Intergovernmental Relations, Queens University, Kingston, Canada, 18-21 October 2007) 1-21

Elebiju A, *Death Knell for Tax Appeal Tribunals?* THISDAY Lawyer (Nigeria 17 May 2011) 7.

Elebiju A, *Tax Appeal Tribunal (TAT): Is Jurisdiction Still in Doubt?* THISDAY Newspaper- (Nigeria 14 August 2012) 6.

Elmira Aliakbari, Contributing Editor: *Assessing Canada’s Energy Sector Competitiveness,* Fraser publishing, July 2019, Canadian Energy News Network – Facts and Information Centre 03. Retrieved 19 July 2020.

Ernest Smith, *From Concessions to Service Contracts* (1992) 27 (4) *Tulsa Law Journal* 493

Ernst and Young, *Global Oil and Gas Tax Guide*. (Ernst and Young 2016) <http://www.ey.com/Publication/EY-2016-Global-oil-and-gas-tax-guide.pdf> accessed 6 August 2017

Etikerense G, *Taxation Under Nigerian Petroleum Law’* A Paper Delivered at the National Workshop on Nigerian Petroleum Law, University of Lagos, May 31st, 1984.

EY/OECD Secretary General sends *Tax Update to G20 Finance Ministers*, *including IMF/OECD report on Tax Certainty’* (EY Global Tax Alert, 21 March 2017) 1-4.

EY/OECD Secretary-General sends *G20 finance ministers an annual Progress Report of the Inclusive Framework on BEPS and update on IMF/OECD Report on Tax certainty* (EY Global Tax Alert, Global Edition, Washington DC, New York, Amsterdam, 25 July 2018) 1-9

Financial Procedures of the House of Commons *Procedure and Practice, Third Edition, 2017,* Edited by Marc Bosc and André Gagnon, supra s 53.

Firs.gov.ng. *Tax Legislations’* (2018) <http://www.firs.gov.ng/Tax-Management/Pages/Tax-Legislations.aspx> accessed 4 September 2018. FIRS | Federal Inland Revenue Service | Nigerian Tax Authority | Taxation News from Nigeria (Taxationnews.com, 2018) <http://www.taxationnews.com/nigeria/FIRS/firs-federal-inland-revenue-service-news-updates.aspx> accessed 2 April 2018.

Fiscal Research Center- *Fiscal Notes and Legislative Support*, Andrew Young School of Policy Studies, Atlanta, Georgia, United States of America, April 2012) 1-44.

Fuburu M, *Analysis of State Taxing Powers* in Akanle O, (eds) Tax Law and Administration, Nigeria Institute of Advanced Legal Studies (NIALS), quoted in Abdulrazaq, CITN Nigerian Tax Guide and Statute (1st edn. 46.

Gaddy, Clifford and Ickes, Barry, *Resource Rents and the Russian Economy* (2005) 46(8) Eurasian Geography and Economics 559-583.

Gattinger, Monica (June 2013)*.* *A National Energy Strategy for Canada: Golden Age or Golden Cage of Energy Federalism?* 2013 Annual Conference of the Canadian Political Science Association.

Giertz, Seth and Feldman, Jacob, *The Economic Costs of Tax Policy Uncertainty: Implications for Fundamental Tax Reform*. (Mercatus Center at George Mason University, 27 November 2012) 1-32.

Giwa-Osagie O. Ehigiato E, *Financing Options in The Oil and Gas Sector in Nigeria* (2015), 33(3) Journal of Energy & Natural Resources Law, 218-240.

Gravelle J, *The Estate and Gift Tax Provisions of The American Taxpayer Relief Act*. (2012), https://digital.library.unt.edu/ark:/67531/metadc811555.

Gravelle, J. G. and Marples D J, *Taxes and International Competitiveness’ Congressional Research Service (CRS) Report*. https://www.takestockblog.com/wp-content/uploads/, RS 22445.

Gribnau Hans, *Legal Certainty: A Matter of Principle’ Retroactivity of Tax Legislation,* May 2013 Tilburg Law School Research Paper No. 12/2014 p. 69.

Guenther G, *Individual Income Tax Rates and Other Key Elements of The Individual Income Tax*: 1988-2017' (2018) Congressional Research Service <<https://fas.org/sgp/crs/misc/RL34498.pdf>> accessed 5 September 2018

Guenther G, *Section 179 And Bonus Depreciation Expensing Allowances: Current Law, Legislative Proposals* In The 113th Congress, And Economic Effects' (2013) Congressional Research Service <<https://www.akingump.com/images/content/2/4/v2/24046/CRS-179-and-168-Report-7-15-13.pdf>> accessed 20 September 2018

Hafez Abdo, *Readings in the International Oil and Gas Agreements and the Economic Rent Concept: The Governance of Petroleum Resources,* Vol. 9, Issue 3 International Energy Journal 163-173 (September 2008).

Hafez Abdo, *Taxation of UK Oil and Gas Production: A Non-Proprietorial Regime?* LAP-Lambert Academic Publishing, pp.53-54.

Head J G, *Tax Fairness Principles: A Conceptual, Historical and Practical Review* (1992) 9 *Australian Tax Forum* 65-125

Hector I, *Nigeria’s oil and gas industry: Challenges and Prospects*, *(*2014) *Sweet Crude Reports* <http://sweetcrudereports.com/2014/04/10/nigerias-oil-and-gas-industry-challenges-and-prospects/> accessed 3 September 2018.

HMRC, *A Guide to UK and UK Continental Shelf,* available at [http://www.hmrc.gov.uk/international/ns-fiscal3.htm](http://www.hmrc.gov.uk/international/ns-fiscal3.htm" \t "_new) (2010). (Assessed 13th June 2023).

HMRC, *Oil and gas taxation: transferable tax history and retention of decommissioning expenditure,* 31 October 2018.

House of Commons, *Tax Evasion And The Use of Tax Havens Report of The Standing Committee On Finance'* (2013) <<https://www.ourcommons.ca/Content/Committee/411/FINA/Reports/RP6085040/finarp17/finarp17-e.pdf>> accessed 15 August 2018.

House of Commons, *Tax Incentives for Charitable Giving In Canada, Report of The Standing Committee on Finance*. (2013), Terrance S. Carter and Karen J. Cooper. http://www.carters.ca/pub/bulletin/charity/2013/chylb301.htm.

Hungerford T, *'Deficit Reduction: The Economic and Tax Revenue Effects of the Personal Exemption Phase-out (PEP) And The Limitation On Itemized Deductions'* (2013) Congressional Research Service <https://fas.org/sgp/crs/misc/R41796.pdf> accessed 9 August 2018.

Hungerford T, *Taxes and the Economy: An Economic Analysis of the Top Rate Since 1945*. https://graphics8.nytimes.com/news/business/0915taxesandeconomy.pdf accessed 20 September 2018.

Idubor R, *Appraising Taxation and The Nigerian Oil Industry*. (2015) *Journal of Law, Policy, and Globalization* 37

Ifueko Omogui-Okauro, *The Challenges of Effective Tax Legislation and Revenue Administration For Funding of Public Services In Nigeria: The Role Of Tax Professionals* (Abuja, 2015) 4.

Ikeyi, N. *Re-appraising the Obligation to Withold Tax under the Nigeria Petroleum Profit Tax Act.* – International Energy Law and Taxation Review. (2005), Sweet and Maxwell Ltd.

Iledare, Wumi ‘*Oil and the Future of Nigeria: Perspectives on Challenges and Strategic Actions for Sustainable Economic Growth and Development*’ (2007) *International Association for Energy Economics* 21-25.

Ilesanmi Akanmidu Paul, *A Historical Perspective of Petroleum on Nigeria’s Economic Crisis Since Independence*’ (2015) 15(2) *Global Journal of Human-Social Science: Economics* 17-24.

IMF & OECD, *‘Tax Certainty. IMF/OECD Report for the G20 Finance Ministers’* (2017) Washington DC. https://taxinsights.ey.com/archive/archive-news/

IMF & OECD, *Tax Certainty- IMF/OECD Report for G20 Finance Ministers*. (IMF/OECD 2017)' (2017) <<https://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-2017.pdf>> accessed 11 May 2024

IMF/OECD, *Report for the G20 Finance Ministers and Central Bank Governors ‘Update on Tax Certainty’ (Organisation for Economic Co-operation and Development,* International Monetary Fund, 2018) 5-47

International Monetary Fund (2003), *Fiscal Policy Formulation and Implementation in Oil-Producing Countries,* Editors: J.M Davis, R. Ossowski, and A. Fedelino.

Ipaye A, *Legal Framework for Assessment of Income Tax Liability*, A Paper Delivered At An Intensive Training On Tax For Legal Officers Of The FIRS (Abuja: 2007) 4

Jack Mintz and Duanjie Chen, *Capturing Economic Rents from Resources through Royalties and Taxes* (The University of Calgary School of Public Policy, Volume 5, Issue 30, October 2012).

James S, and Alley C, *Tax Compliance, Self-Assessment and Tax Administration*. (2004), 2 Journal of Finance and Management in Public Services.<https://ore.exeter.ac.uk/repository/bitstream/handle/10036/47458/james2.pdf?sequence=1> accessed 11 March 2018.

Jason Brown, Timothy Fitzgerald, and Jeremy Weber, *Does Resource Ownership Matter? Oil and Gas Royalties and the Income Effect of Extraction* (2019) Journal of the Association of Environmental and Resource Economists (forthcoming).

Jeffrey Owens, *The Role of Tax Certainty in Promoting Sustainable and Inclusive Growth* (Multi-Disciplinary Academic Conference, UNCTAD, Geneva, 26 October 2018) 1-10.

Joseph Aigboduwa and Michael Oisamoje, *Promoting Small and Medium Enterprises in the Nigerian Oil and Gas Industry* (2013) 9(1) European Scientific Journal 244-261

Junaidu Marshall Bello, *Joint Operating Agreements in Oil and Gas Industry: The Consequence of Sole Risk and Non-Consent Clauses to Joint Operation*. (2016) 6(10) Asian Economic and Social Society, pp 214-220.

Kachikwu E, *Legal Issues in the Nigerian Petroleum Industry* (Law Publishing and Conference Services Ltd 2016).

Kachikwu O, *'Five Reasons Oil Price Drop Will Be Devastating for Nigeria'* [2014] Ventures Africa <http://www.resourcesgovernance.org.countries/africa/nigeria/oven>.

Kehinde T, *Taxing Powers in Nigeria- Time for a New Approach*. 3 Finance and Investment Law, MPJFIL, 268.

Keightley M, *The 3.8% Medicare Contribution Tax On Unearned Income, Including Real Estate Transactions*. (2010) https://economic-legislation.blogspot.com/2010/09/38-medicare-contribution-tax-on.html accessed 17 September 2018

Keightley, M and Sherlock M F, *The Corporate Income Tax System: Overview and Options for Reform* (2012), [https://www.researchgate.net/publication/239823793 - accessed 11 May 2024](https://www.researchgate.net/publication/239823793%20-%20accessed%2011%20May%202024).

Kirsten Bindermann, *Production-Sharing Agreements: An Economic Analysis’* (Oxford Institute for Energy Studies, WPM 25, October 2019) 1-106

Konto K A, *A Theoretical and Empirical Investigation into the Design and Implementation of an Appropriate Tax Regime: An Evaluation of Nigeria’s Petroleum Taxation Arrangements*’ (DPhil thesis, Robert Gordon University 2013)

*KPMG -* *A Guide to Oil and Gas Taxation in Canada (2015 kpmg.ca/energytax).*

KPMG Professional Services, *'Nigeria's Oil and Gas Industry Brief,'* (KPMG Nigeria 2018) <http://www.blog.kpmgafrica.com/wp-content/uploads/2016/10/Nigerias-oil-and-gas-Industry-brief.> accessed 1 April 2018.

KPMG, *Transfer Pricing Awareness Survey* (KPMG Nigeria, Lagos, Nigeria, June 2017) 1-28.

KPMG-Nigeria, *'Investment in Nigeria'* (2016) <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/investment-in-nigeria-2016.pdf> accessed 20 March 2016

KPMG-Nigeria’s- *Oil and Gas Industry Brief* (KPMG Professional Services, KPMG Nigeria, June 2014) 1-22.

Kyle Logue, *Optimal Tax Compliance and Penalties When the Law is Uncertain* (2007) 27 *Virginia Tax Review* 241-296.

Lawal K, *Taxation of Petroleum Profit under the Nigeria’s Petroleum Profit Tax Act*. (2013) 4(2) Int’l JALSG 1

Lawsky, Sarah B, *Probably, Understanding Tax Law's Uncertainty*. (2009) 157(4) University of Pennsylvania Law Review 1017-1074.

Lee Y, and Roger H. Gordon R H, *Tax Structure and Economic Growth*. (2005) 89 *Journal of Public Economics* 1027-1083

Lewis Cook E, Nellen T, *Taxing Principles for The Digital Age*. (May 2017) Journal of Accountancy.

Lin E Y, and Tong P K, *Marriage and Taxes: What Can We Learn From Tax Returns Filed By Cohabiting Couples?'* (2012) 65 *National Tax Journal 1.*

Logue, Kyle *Optimal Tax Compliance and Penalties When the Law is Uncertain’* (2007) 27 *Virginia Tax Review* 241-296.

Long, Susan and Swingen, Judyth, *Taxpayer Compliance: Setting New Agendas for Research’* (1991) 25 Law and Society 637 646-647.

Lowry, Sean, *Tax Deductions for Individuals, Itemized Tax Deductions for Individuals Data Analysis*. (2017) Congressional Research Service <https://fas.org/sgp/crs/misc/R43012.pdf>

Lucas, Viola. and Thomas Richter, *State hydrocarbon rents, authoritarian survival and the onset of democracy: Evidence from a new dataset.*  (2016) Research and Politics 1-9.

Majekodunmi, Aderonke, *Federalism in Nigeria: The Past, Current Peril and Future Hopes*’ (2015) 9(2) *Journal of Policy and Development Studies* 107-120.

Malden, Alexander, *‘Nigeria’s Oil and Gas Revenues: Insights from New Company Disclosures’* (Natural Resource Governance Institute, December 2017) 1-18.

Manaf et al. (2016). Likewise, *Nakhle and Lassourd (2019) evaluate Tax Notes 2020 by Carole Nakhle and Acheampong in Oil and Gas Fiscal Policies: The Impact of Oil Price, Investment, and Production Trend.*

Matallah, Siham and Matallah, Amal. *Oil Rents and Economic Growth in Oil-Abundant MENA Countries: Governance is the Trump Card to Escape the Resource Trap*. (Department of Economics, University of Tlemcen, Algeria, 2016) 1-29.

Michael Asagunla and Oyeyemi Agbede, *Oil Revenue and Output Growth in Nigeria* (2018) 4(6) International Journal of Economics and Business Management, pp 65-74.

Mintz Jack and Chen Duanjie, *Capturing Economic Rents from Resources through Royalties and Taxes*. (The University of Calgary School of Public Policy, Volume 5, Issue 30, October 2012) 1-47.

Moloo, Rahim and Khachaturian, Alex. *The Compliance with the Law Requirement in International Investment Law.*  (2011) 34(6) Fordham International Law Journal 1473-1501.

Michael C. Moore, (October 2015). *An Energy Strategy for Canada (PDF).* *Canadian Global Affairs Institute (CGAI)* (Report). Calgary, Alberta. p. 27. ISBN 978-1-927573-49-5. Retrieved 20 July 2020.

Myles, Gareth, *Taxation and Economic Growth*. (2000) 21(1) Institute of Fiscal Studies 141-168. https://www.ifs.org.uk/fs/articles/0105a.pdf.

NAO, *Oil and Gas in the UK: offshore decommissioning,* HC 1870, 25 January 2019 pp.25-26.

Natural Resources Canada, (January 2006), *Legal and Policy Frameworks - Canada, North America: The Energy Picture.* Archived from the original on 4 November 2006. Retrieved 16 August 2008.

Nigerian Bureau of Statistics, 'Nigerian Gross Domestic Product Report Q4' (2016). https://nigerianstat.gov.ng/elibrary?queries[search]=gdp.

Nigerian National Petroleum Corporation- *Mission & Vision,* http://www.nnpcgroup.com/AboutNNPC/MissionVision.aspx accessed 11 May 2024.

Nigerian National Petroleum Corporation *Oil Production*. <http://www.nnpcgroup.com/nnpcbusiness/upstreamventures/oilproduction.aspx> accessed 11 May 2024.

Nkwopara C, *Nigeria’s Natural Gas Reserves High — DPR*, Vanguard Newspaper (1 June 2017) <<https://www.vanguardngr.com/2017/06/nigerias-natural-gas-reserves-high-dpr/>> accessed 11 May 2024

Nlerum F, *Reflections on Participation Regimes in Nigeria's Oil Sector*. (2007), Nigerian Current Law Review 147.

Nnona G, *New Policy Regime for Gas in Nigeria: A Perspective on Tax and Related Incentives*. (2003) 21 *Journal of Energy and Natural Resources Law* (2003).

Nuschler D, *Temporary Payroll Tax Reduction*, See CRS Report R42035, web.ncf.ca/fl512/government/2013/extending the temporary payroll reduction.

Nwachukwu C, *PIB: Legacy legislation begging for passage*. Vanguard (8 January 2014) online: <http://www.vanguardngr.com> accessed 11 May 2024.

Nwaoba Itumo, Victor. *Nigeria’s Mono-Cultural Economy: Impact Assessment and Prospects’* (2016) 8 (2) *European Journal of Interdisciplinary Studies* 20-35.

Nweje C, *Nigeria: How Lack of Transparency in Oil Sector Under-Develops Nigeria*. Daily Independent (24 August 2014) online: http://allafrica.com accessed 11 May 2024.

Nwete B O N, *How Can Tax Allowances Promote Investment in the Nigerian Petroleum Industry.*’

Nweze Paul Nweze and Edame, Greg Ekpung. *‘An Empirical Investigation of Oil Revenue and Economic Growth in Nigeria*’ (2016) 12(25) *European Scientific Journal* 271-294.

Nwoba, Martin and E.O. Abah, *Impact of Crude Oil Revenue (COR) On Economic Growth in Nigeria* (1960-2010)’ (2017) 22(7) IOSR *Journal of Humanities and Social Science* (IOSR-JHSS) 85-99.

Nwokeji, Ugo. *The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions*. (The James A. Baker III Institute for Public Policy, Japan Petroleum Energy Center, Rice University, March 2007) 1-146.

Oando - *Investing in the Energy Chain: Transforming Africa.*  (Oando Plc, Lagos, Nigeria 2013) 1-28; Simmons and Company, ‘Midstream and Downstream’ <http://www.simmonspjc.com/Investment-Banking/Industry-Sectors/Midstream-and -Downstream/ > accessed 11 May 2024.

Obayemi O, *Legal Validity of Tax Opinions/Advance Tax Rulings in Nigeria: Revisiting Saipem Contracting Nigeria Ltd vs Federal Inland Revenue Service,* Suit No: FHC/L/CS/1081/09’ *This Day Lawyer* (30 September 2014) 12.

Obayomi Wole & Ogungbenro Tope, KPMG Nigeria, *Transfer Pricing Awareness Survey’ J*une 2017, 1-28. KPMG.com/ng.

Obioma Helen, and Onyi-Gelle*. National Participation in the Nigeria Oil and Gas Industry: Prospects and Challenges.*  (2016) 7(2) *Journal of Emerging Trends in Educational Research and Policy Studies* (JETERAPS) 134-144.

Ocheni, Stephen (2015) 3(1) *Oil and Gas Industry and the Growth of Small and Medium Enterprises in Nigeria: Local Content Policy Implications*’ *Journal of Small Business and Entrepreneurship Development* 66-75.

Oduntan, O M. *The Role of Taxation in Nigeria’s Oil and Gas Sector Reforms-Learning from the Canadian Experience*. (University of Saskatchewan 2015).

Odusola A, *Tax Policy Reforms in Nigeria’ World Institute for Development Economics,* Research Paper No. 2006/3, (United Nations University 2006)

OECD, *Model Tax Convention on Income and On Capital, Condensed Version*. (2010).

Ogunleye Taiwo, *A Legal Analysis of Production Sharing Contract Arrangements in the Nigerian Petroleum Industry*’ (2015) 5(8) *Journal of Energy Technologies and Policy* 1-10

'Oil & Gas Regulation 2018 | Laws and Regulations | Nigeria | ICLG' (Oil & Gas Regulation 2018 |Laws and Regulations | Nigeria | ICLG, 2018) <https://iclg.com/practice-areas/oil-and-gas-regulation/oil-and-gas-regulation-2017/nigeria#chaptercontent1> accessed 11 May 2024

'OilProduction',Nnpcgrouptest.nnpcgroup.com (2018) <http://nnpcgrouptest.nnpcgroup.com/NNPC-Business/Upstream-Ventures/Pages/Oil-Production.aspx> accessed 11 May 2024.

Ojide Gabriel, Salami Kareem, Fatimah Kari, Gazi Alam and Oke Matuin, *Impact of Gas Industry on Sustainable Economy in Nigeria* (2012) 12 *Journal of Applied Sciences* 2244-2251

Oke, K. ‘Oil Discovery at Oloibiri’ (The Guardian Newspaper, 30 July 2006, Lagos, Nigeria) (online) cited in Nlerum, Francisca E. in ‘Reflections on Participation Regimes in Nigeria’s Oil Sector’ (2007-10) *Nigerian Current Law Review* 147.

Okezie C.A. and Baharuddin Amir, *Economic crossroads: The experiences of Nigeria and lessons from Malaysia* (2011) 3(8) *Journal of Development and Agricultural Economics* 368-378.

Okonkwo T, *Ownership and Control of Natural Resources Under the Nigerian Constitution 1999 And Its Implication For Environmental Law And Practice*. (2017) 8(1) International Law Research

Oladunjoye O, *Incorporated Joint Ventures in the Nigerian Petroleum Industry: Examining the Legal Implications & Regulatory Risks*’ (2013) 11(2) *Oil, Gas & Energy Law Intelligence* 1-12.

Oloidi, Frances Jumoke,  *Webology ‘The Colonial Administrators And Income Policies In Nigeria Before Independence* (1900 – 1960) (ISSN: 1735-188X) Volume 18, Number 5, 2021

Olumuyiwa Adeyemo, *A Guide to the Taxation of Oil Companies in Nigeria* (1st edition, Routledge 2007).

*Omar Mawji,**Canada’s oil and gas decommissioning liability problem,* Institute for Energy Economics and financial Analysis, 2021 Study.

Omogui-Okauro I, *The Challenges of Effective Tax Legislation and Revenue Administration for Funding of Public Services in Nigeria: The Role of Tax Professionals*. (2015)

Omorogbe Yinka, *The Legal Framework for the Production of Petroleum in Nigeria*. (1987) 5 *Journal of* Energy Natural Resources Law 273.

Omorogbe Yinka, *Fiscal Regimes’* (Nigerian Extractive Industries Transparency Initiative Civil Society Capacity Building Workshop, Presidential Hotel, Port Harcourt, Rivers State, July 2005) 1-10.

Onaiwu E, *Production Sharing or Joint Venturing: What Is the Optimum Petroleum Contractual Arrangement for the Exploitation of Nigeria Oil and Gas*?’ (2014) 2(2) *Journal of Business and Management Sciences* 35-44.

OPEC, '*Annual Statistical Bulletin*' (2017) <http://www.opec.org/opec_web/static_files_project/media/downloads/publications/ASB2017_13062017.pdf>.

Oremade, T. *Perception of Petroleum Profits Tax Compliance in Nigeria*. (D.Phil Bournemouth University 2010).

*Osgood Hall Law Journal, Vol 26 No. 3,* Copyright, 1988, *John F. Helliwell, Mary E. MacGregor, Robert N. McRae & Andrd Plourde.*

Osofsky Leigh, *The Case Against Strategic Tax Law Uncertainty*. (2011) 64 *New York University Tax Law Review* 489-538.

Ososami L, *Developments in Nigeria's Tax Regime For Gas Utilisation Projects* (2008) <http://www.mondaq.com/Nigeria/x/70210/Oil+Gas+Electricity/Developments+In+Nigerias+Tax+Regime+For+Gas+Utilization+Projects> accessed 14 September 2018.

*Overview of the Petroleum Industry Bill,* (Sept. 2012) [https://www.lexology.com/contributors/hogan-Lovells:Legal](https://www.lexology.com/contributors/hogan-Lovells:Legal" \t "_new) Influencer.

Owens Jeffrey, *The Role of Tax Certainty in Promoting Sustainable and Inclusive Growth*. (Multi-Disciplinary Academic Conference, UNCTAD, Geneva, 26 October, 2018) 1-10.

Owolabi A, *Oando V FIRS: Implications for Tax Policy, Law and Administration in Nigeria*' (LLM Thesis University of Lagos), Oxford Business Group, ‘Nigeria's Tax Framework And Its Implications For Businesses’-The Report: Nigeria 2015 <https://oxfordbusinessgroup.com/overview/nigerias-tax-framework-and-its-implications-businesses> accessed 11 May 2024.

Owolabi, T, Esan W, & Salawu D, *Oil and Gas Regulation in Nigeria: Overview*. online: Practical Law <uk.practicallaw.com> accessed 20 September 2018.

Oyedele T, N*igeria's New National Tax Policy: A New Dawn or Another False Start*?' [https://www.pwc.com/ng/en/assets/pdf/new-national-tax-policy.pdf accessed 11 May 2024](https://www.pwc.com/ng/en/assets/pdf/new-national-tax-policy.pdf%20accessed%2011%20May%202024).

Pagone G T, *Tax Uncertainty* (Melbourne University Law Review 2009), www5.austlii.edu.au/au/journals/MelbULawRw/2009.

Philip A O, *The Nigerian Tax System at Crossroads*. (1987) Selected Papers, *Nigerian Institute of Taxation* 39.

Daniel, Philip, Keen, Michael, and McPherson, Charles, The *Taxation of Petroleum Mineral and Principles, Problems and Practice.* Chapter 15, *Time Consistency in Petroleum Operations,* pp. 425-444.

Piper J, (2014). ‘*Certainty in tax’* <https:// www.accaglobal.com/content/dam/acca/global/PDF-technical/tax-publications/tech-tp-cit.pdf accessed 11May 2024.

Pitman, Rob and Chinweze, Anne. *The Case for Publishing Petroleum Contracts in Nigeria*’ (Natural Resource Governance Institute, New York, USA, March 2018).

Powell, Drew et al, *Midstream and Downstream Oil and Gas Services: Enhancing Value*. (Gaffney, Cline & Associates, 2013) 1-4.

*Power Switch: Energy Regulatory Governance in the 21st Century.*

*Proposals for Tax Reform, by E. J. Benson,* Minister of Finance (1969). *Canada Department of Finance, Queen's Printer for Canada Ottawa,* 1869 Cat. No.: P32489.

PwC - *The National Petroleum Fiscal Policy – Old Wine in a New Bottle?* (PwC Nigeria, Lagos, Nigeria, March 2017) 1-3.

PWC, *Nigeria @ 50: Top 50 Tax Issues*. (2010) <http://www.pwc.com> accessed 20 September 2018.

PwC, *The National Petroleum Fiscal Policy – Old Wine in a New Bottle?* (PwC Nigeria, Lagos, Nigeria, March 2017) 1-3.

Rapu, Chukwueyem, et al. *Analysis of Energy Market Conditions in Nigeria*. (Central Bank of Nigeria, Federal Capital Territory, Abuja, October 2015) 1-80.

*Report of the Royal Commission on Taxation (Ottawa: Queen’s Printer and Controller of Stationery, 1967).*

*Report Respecting the White Paper on Tax Reform (Ottawa: Queen's Printer, 1970) at 74.*

Bird, Richard and Scott Wilkie, *Designing Tax Policy: Constraints and Objectives in an Open Economy* (International Center for Public Policy Working Paper 12-24, Andrew Young School of Policy Studies, Georgia State University Atlanta, Georgia, United States of America, 2012) 1- 44.

Eccleston, Richard and Woolley, Timothy: *From Calgary to Canberra: Resource Taxation and Fiscal Federalism in Canada and Australia,* *Publius,* Vol. 45, No. 2 (Spring 2015), pp. 216-243, Published By: Oxford University Press.

Rob Pitman and Anne Chinweze, *The Case for Publishing Petroleum Contracts in Nigeria* (Natural Resource Governance Institute, New York, USA, March 2018)

Ryan, Christopher, *Discerning the Compliance Calculus: Why States comply with International Investment Law’* (2009) 38, 63-95.

Saidu Sani, and Sadiq, Hamid, *Production Sharing or Joint Venturing: What Is the Optimum Petroleum Contractual Arrangement for the Exploitation of Nigeria Oil and Gas?’* (2014) 2(2) Journal of Business and Management Sciences 35-44.

Saidu, Sani and Mohammed, Abdel. *The Nigerian Petroleum Industry Bill: An Evaluation of the Effect of the Proposed Fiscal Terms on Investment in the Upstream Sector*. (2014) 2(2) Journal of Business and Management Sciences 45-57.

Sanda A, *Public administration in periods of uncertainty*. (Ibadan: Fact Finders International 1992).

Sani Saidu and Abdel Mohammed, *The Nigerian Petroleum Industry Bill: An Evaluation of the Effect of the Proposed Fiscal Terms on Investment in the Upstream Sector* (2014) 2(2) Journal of Business and Management Sciences 45-57.

Sani Saidu and Hamidu Sadiq, *Production Sharing or Joint Venturing: What Is the Optimum Petroleum Contractual Arrangement for the Exploitation of Nigeria Oil and Gas?* (2014) 2(2) Journal of Business and Management Sciences 35-44

Sanni A, *The Role of Law in Tax Compliance*. Report on FIRS Enlarged Management Meeting of Jan 30th – 1st Feb 2006.

Sanni A, and Asiweh M, *Impact of Tax Administration on Government Revenue in a Developing Economy – A Case Study of Nigeria*. (2012) 3:8 Int’l J Bus & Soc Sci 99.

Sanni A, *CITN Position on the Conflicting Decisions on the Federal High Counts on the Constitutionality or Otherwise of the Tax Appeal Tribunal*. (CITN Indirect Tax Faculty April 23, 2014)

Sanni A, *Division of Taxing Powers Under The 1999 Constitution*. (2002) [www.legalpediaresources.com/node/2933 accessed 11 May 2024](http://www.legalpediaresources.com/node/2933%20accessed%2011%20May%202024).

Sanni A, *Problems of Determining The Applicable Tax Laws In Nigeria: Resolving The Dilemma For FIRS And Taxpayers.*  56 Journal of African Law (2012) 1, 55-67.

Sarah B. Lawsky, *Probably - Understanding Tax Law's Uncertainty* (2009) 157(4) University of Pennsylvania Law Review 1017-1074

Schultz, Thomas and Cedric Dupont, *Investment Arbitration: Promoting the Rule of Law or Over-empowering Investors? A Quantitative Empirical Study*. (2015) 25(4) *European Journal of International Law* 1147-1168.

Schwarz, Jonathan *Tax Certainty: Cure the disease not the symptom*. (Kluwer International Tax Blog, The Netherlands, 28 August 2018) (online).

Scott C, *The Earned Income Tax Credit*' Congressional Research Service (2013) <https://fas.org/sgp/crs/misc/RS21352.pdf>.

Segun K, *Nigeria: Oil, Profits and Post-Tax Returns*. Oil and Gas Taxation Review’ (1999) *Nigeria Tax Journal* Issue 5, 125-131Service N, *A Comprehensive Tax History of Nigeria* (Safari Books Ltd 2012).

Shah, Anwar, Series Editor, *Public Sector Governance and Accountability Series: Public Expenditure Analysis* (The International Commission for Reconstruction and Development / The World Bank, Washington DC, USA 2005) 1-292.

Siham Matallah and Amal Matallah, *Oil Rents and Economic Growth in Oil-Abundant MENA Countries: Governance is the Trump Card to Escape the Resource Trap* (Department of Economics, University of Tlemcen, Algeria, 2016).

Silvana Tordo *et al, Countries’ Experience with the Allocation of Petroleum Exploration and Production Rights: Strategies and Design Issues.*  (The World Bank Group, World Bank Working Paper).

Silvana Tordo, *Fiscal Systems for Hydrocarbons: Design Issues* (The International Bank for Reconstruction and Development/ The World Bank, World Bank Working Paper No. 123, Chapter 1, p.1-86, Washington DC, USA).

The Economist, ‘Nigeria’s Oil: *A Desperate Need for Reform’* (2012) Editorial,

Tordo, Silvana; David; Johnston, and Johnston, Daniel. 2010. *Petroleum exploration and Production Rights: allocation strategies and design issues* (English). (World Bank working paper. no. 179, World Bank, Washington, DC, USA) 1-126.

Simmonspjc.com. *‘Investment banking | Midstream, Downstream Energy Business’* http://www.simmonspjc.com/Investment-Banking/Industry-Sectors/Midstream-and-Downstream/ accessed 5 September 2018.

*Six Historical Events in the First 100 Years of Canada's Petroleum Industry.* Petroleum Historical Society of Canada. 2009.

Smith Ernest, *From Concessions to Service Contracts.*  (1992) 27 (4) *Tulsa Law Journal* 493.

SPA Ajibade & Co, *Recent Developments on The Arbitrability of Tax Disputes in Nigeria*’ (2016) <http://www.spaajibade.com/resources/wp-content/uploads/2016/12/recent-developments-on-the-arbitrability-of-tax-disputes-in-nigeria.pdf.> accessed 11 May 2024

Stark J, *Should the Main Goal of Statutory Drafting Be Accuracy or Clarity?* (1994) 15(3) *Statute Law Review* 207-13.

Summers L H, *Tax Policy and International Competitiveness*. (1988), International Aspects of Fiscal Policies. [http://www.nber.org/chapters/c7931 accessed 11 May 2024](http://www.nber.org/chapters/c7931%20accessed%2011%20May%202024).

Taiwo Ogunleye, *A Legal Analysis of Production Sharing Contract Arrangements in the Nigerian Petroleum Industry* (2015) 5(8) Journal of Energy Technologies and Policy 1-10.

Tax System' <http://www.thefreedictionary.com/tax+system> accessed 11 May 2024.

*The 1980 National Energy Program (NEP)-* *Canadian Journal of Political Science.* 26 (1): 31–35.

The Association of Chartered Certified Accountants (ACCA), *Foundations for a sound tax system: simplicity, certainty and stability* (The Association of Chartered Certified Accountants, Think Ahead, June 2015) 1-12

*The Process of Making Tax Policy: An International Comparison* (Proceedings of a Round Table on the Tax Policy Process), p.8.

Thomas L H, *Deficit Reduction: The Economic and Tax Revenue Effects Of The Personal Exemption Phase out And The Limitation On Itemized Deductions*. (2013) Congressional Research Service [https://fas.org/sgp/crs/misc/R41796.pdf accessed 11](https://fas.org/sgp/crs/misc/R41796.pdf%20accessed%2011) May 2024.

Thorsten Jobs, (2006. Constitutional principles of legality and certainty of the legal norms of tax and criminal law. In *Tax law in the decisions of the Constitutional Court of the Russian Federation in 2004*. Moscow: Wolters Kluwer. [[Google Scholar](https://scholar.google.com/scholar_lookup?title=Constitutional+principles+of+legality+and+certainty+of+the+legal+norms+of+tax+and+criminal+law&author=Jobs,+Thorsten&publication_year=2006" \t "_blank)]),

U.S. Office of Management and Budget, *'Budget of The U.S. Government, Fiscal Year' 2011* <http://www.whitehouse.gov/omb/budget/Historicals.> accessed 8 August 2018.

U.S. Office of Management and Budget, *'Budget of The U.S. Government, Fiscal Year 2014*, Historical Tables Table' (2014) <http://www.whitehouse.gov/omb/budget/Historicals.> accessed 8 August 2018.

Ugo Nwokeji, *The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions* (The James A. Baker III Institute for Public Policy, Japan Petroleum Energy Center, Rice University, March 2007). 1-146

Vanessa Mak, *The Principle of Legal Certainty in EC Law*. Law and Philosophy Library, vol 64. Springer, Dordrecht. https://doi.org/10.1007/978-94-017-0353-6\_6 (2013).

Vanguard *Fiscal policy to quell uncertainty in petroleum industry – Country Chair, SPE.* (Vanguard, Lagos, Nigeria, 1 August 2017) (online) < https://www.vanguardngr.com/2017/08/fiscal-policy-bill-to-quell-uncertainty-in-petroleum-industry-country-chairspe/> accessed 19 March 2019.

Vanguard, *Fiscal policy to quell uncertainty in petroleum industry – Country Chair, SPE* (Vanguard, Lagos, Nigeria, 1 August 2017) (online) [https://www.vanguardngr.com/2017/08/fiscal-policy-bill-to-quell-uncertainty-in-petroleum-industry-country-chairspe/](https://www.vanguardngr.com/2017/08/fiscal-policy-bill-to-quell-uncertainty-in-petroleum-industry-country-chairspe/" \t "_new) accessed 02 June 2023.

Wahab and Diji, C.J., *Comparative Analysis of Nigeria Petroleum Fiscal Systems Using Royalty and Tax Optimization Models to Drive Investments*. (2017) 3(3) Oil and Gas Research 1-14.

Wahrig L and Vallina G (2011); Modica E, Laudage S and Harding M (2018), *Domestic Revenue Mobilisation: A new database on tax levels and structures in 80 countries*. OECD Taxation Working Papers No. 36 (Paris: OECD Publishing).

Watts, Ronald. *The Historical Development of Comparative Federal Studies*. (Queen’s University, Kingston, Working Paper, 2007) 1-33.

Wheare, K C, *Federal Government* (4th edn, London: Oxford University Press 1963).

White J, *The Legal Imagination* (Abridged edn. Chicago: University of Chicago Press 1985)1-8.

World Bank*, ‘Taxation and State Participation in Nigeria's Oil and Gas Sector.*Energy Sector Management Assistance Programme (ESMAP) (2004) https://openknowledge.worldbank.org/handle/10986/18078 License -accessed 11 May, 2024.

Wumi Iledare, L., Wahab L and Diji C.J., *Comparative Analysis of Nigeria Petroleum Fiscal Systems Using Royalty and Tax Optimization Models to Drive Investments* (2017) 3(3) Oil and Gas Research 1-14.

Wumi Iledare, *Oil and the Future of Nigeria: Perspectives on Challenges and Strategic Actions for Sustainable Economic Growth and Development* (2007) International Association for Energy Economics 21-25

Yackee, Jason, *Political Risk and International Investment Law*. (2014) 24 Duke Journal of Comparative & International Law 477-500.

Yehonnatan, Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings.* (2009) 29 Virginia Tax Review 1-34; (Harvard John M. Olin Center for Law, Economics, and Business Fellows’ Discussion Paper Series, Discussion Paper No. 30, Harvard Law School, Cambridge, USA) 1-36.

Yoon, Sung-Soo, Yoo, Seung-Weon and Kim, Jinbae, *Ambiguity, Audit Errors, and Tax Compliance*. (2011) 18 Asia-Pacific Journal of Accounting & Economics 11–26.

Zangari E, Calumi A, and Hemmelgarn T, Economic Evidence and Policy Responses, '67 European Commission Taxation Papers, https://ec.europa.eu/taxation\_customs/sites/taxation/files/taxation\_paper\_67.pdf.

**CASES - NIGERIA**

A.G. Abia State v. A.G. Federation [2006] 16 NWLR (Pt. 1005) 265 at 381, para E.

A.G. Federation v A.G. Lagos State (2013) 16 NWLR (Part 1380) 249 SC.

Aboud v Regional Tax Board [1 NTC 124]

Addax Petroleum v FIRS [2013] 1 NRLR 33

Aderawos Timber Trading Co Ltd v Federal Inland Revenue Service [1969] LLR 195

Adesina v Federal Board of Inland Revenue [1992] 1 NTC 360

A-G Abia & Ors. v. A-G Federation 2003 4 NWLR (Pt.809), 124.

A-G Federation v. A-G Abia & Ors. (2001) LPELR 24862 (SC).

AG Ogun State v Aberuagba [1985] 1 NSCC 487

AG Rivers State & 2 Ors. v AG. Federation of Nigeria: 2 Suit No. SC/964 [2016]

Alitalia Airlines Ltd v FBIR [1 NTC 222]

Ariori v Elemo [1983] 1 SCNLR, [1983] ANLR 1

Attorney General (AG) of Lagos State v Eko Hotels Ltd & Anor [2006] 6 All NTC,356

Attorney General (AG) of Lagos State v. Eko Hotels Ltd & Anor. 6 ALL NTC P356 Line 2, 5-6).

Attorney General of the Federation v Attorney General of Abia State [2002] (No 2) 617

Attorney General of the Federation v. Attorney General, Abia State & 35 Ors. (No. 2) (2002) 6 NWLR (Pt 764)542

Attorney General Rivers State v FIRS & Attorney General of the Federation (suit no FHC/PH/CS/149/2020)

Attorney General, Ogun State v Alhaja Ayinke Aberuagba 1984 S.C.20; (1985) 1 NWLR (PT. 3) 395.

Attorney Generals of Rivers, Bayelsa & Akwa Ibom States vs Attorney General of the Federation, Suit No. SC964/2016.

Bamidele v Commissioner for Local Government [1994] 2 NWLR pt 328 -585

Brasoil Services Company (Nigeria) Ltd v FIRS [2016] 24 TLRN 24

Chevron Nigeria Ltd v FIRS (EGP3) [2016] 21TLRN53

Chevron Nigeria Ltd v FIRS (EGTL Appeal) [2016] 21TLRN 26

Chevron Nigeria Ltd v FIRS II [2016] 22 TLRN 117

Chevron Nigeria Ltd v Ondo State Board of Internal Revenue [2015] 19 TLRN 1

CNOOC Exploration v FIRS [2013] 9 TLRN 28

Doherty v Balewa (1961)2 NSCC 248 at 252

Emmanuel C. Ukala SAN v FIRS & Attorney General of Federation, (Suit no: FHC/PHC/CS/30/2020.

Ess-Ay Holdings limited v Federal Inland Revenue Service TAT /LZ/VAT/029[2019]

Esso Exploration & Production Nig. Ltd & Anor v FIRS [2015] 17 TLRN 83

Eti-Osa Local Government v Jegede [2018] 6 ALL NTC VOL 6, 251

FBIR v Halliburton (WA) Limited [2015] 17 TLRN 1

FBIR v. Halliburton (WA) Ltd 2016 4 NWLR (Pt. 1501) 53.

Federal Board of Inland Revenue v Omotosho 1 NTC 257

Federal Government of Nigeria v Zebra Energy Ltd NOGC 3 (2) [2001-2002], 354

FIRS v Mobil Producing Nigeria Unlimited [2018] 37 TLRN 1

FIRS v Total E&P Nigeria Limited, FHC [2020]

Gazprom Oil and Gas Nig. Ltd v. Federal Inland Revenue Service [2015] 19 TLRN 66

Global International Drilling v FIRS [2013] 12 TLRN 1

Gulf Oil Company (Nig) Ltd v FBIR (1997) NWLR (Pt 514), [2012] 7 TLRN 163

Halliburton West Africa Ltd v FBIR [2013] 11 TLRN 84

Ibidapo v Lufthansa Airlines (1997) 4 NWLR (Pt 498) 124

Ishola v Ajiboye (1994) 6 NWLR (Pt 352) 506.

JGC Corporation vs FIRS [2014] 15 TLRN 105

Mama Cass Restaurant v FBIR 6ALL NTC 97

Mobil Producing Nigeria Unlimited v FIRS No. 4 (2015) 18 TLRN 115

Mobil Producing Nigeria Unlimited V Tai Local Government [2003] 5 All NTC.

Mobil Production Nigeria Unlimited v FIRS [2016] 25 TLRN 39

Moni Pulo v Brass Exploration [2012] 6 CLRN 153

MTN Nigeria Communications Plc v FIRS [2020] 50 TLRN 42

Muskrat v United States [1911] 219 US

Niger Delta Development Commission v Nigeria Liquefied National Gas Limited (NDDC v NLNG) (2010) LPELR-CA/PH/520/2007.

Nigeria LNG Ltd v AGF & 2 Ors [2018] 33 TLRN 9

Nigeria National Petroleum Corporation v Tax Appeal Tribunal & 3 Ors [2013] (Suit No FHC/L/CS/630/2013)

Nigerian Agip Oil Company Limited vs FIRS [2014] 16 TLRN 25

Nigerian Breweries PLC v Federal Inland Revenue Service [2016] 24 TLRN 40

Nigerian National Petroleum Corporation v CNOOC Exploration & Production Nigeria Limited & Ors [2015] 20 TLRN 17

Nigerian National Petroleum Corporation vs Tax Appeal Tribunal [2014] 13 TLRN 39

Njikonye v MTN Nigeria Communication [2008] 9 NWLR (Pt 1092) 339

NOSDRA V ExxonMobil [2018] 13 NWLR (PT. 1636) 334

Nwadioro & 2 Ors v Shell Petroleum Development Company of Nigeria Ltd, NOGC 1 [1961 -1995], 205

Nwadioro & 2 Ors. v. Shell Petroleum Development Company of Nigeria Ltd NOGC 1 [1961 -1995] 205 CA.

Oando Plc v FIRS [2015] 17 TLRN 1Oando Plc v FIRS [2014] 16; TLRN 99 [2016] 26 TLRN 1

Oando Plc v FIRS II [2013] 11 TLRN 169

Oando Supply & Trading Ltd v FIRS [2011] 4 TLRN 113

Oando v FBIR (2009) 1 TLRN 6

Offshore International v FBIR [1 NTC 384]

Offshore International v FBIR [2011] 4 TLRN 59, 84

Okupe v FBIR [1 NTC 321]

Onagoruwa v The State [1993] 7 NWLR (Pt 303) 49,102

Oyeniran v Egbetola [1997] 5 NWLR (Pt 504) 122,131

Peenok Investments Ltd v. Hotel Presidential (1982) 12 SC 1.

R&B Falcon Exploration Company LLC v Federal Inland Revenue Service [2016] 25 TLRN 94

Re Eurig's Estate [1998] 165 DLR (4th)

Registered Trustees of Hotel Owners and Managers Association v AG Federation & Minister of Finance FHC/L/CS/1082/19 [2020]

Reverend Shodipo v Federal Board of Inland Revenue [1 NTC 273]

Sahara Energy Exploration and Production Limited v Federal Inland Revenue Service (Bloomberg Tax 2022)

Saipem Contracting Nigeria Ltd v FIRS [2014] 15 TLRN 76

Schlumberger Nigeria Limited v Obio-Akpor Local Government Council [2007] Suit PHC/1206/2007

Shell (Nig.) Exploration and Production Ltd & 3 others v Federal Inland Revenue Service case Unreported Appeal No CA/A/208/2012

Shell (Nig.) Exploration and Production Ltd & 3 others v Federal Inland Revenue Service [2016] 21 TLRN 41

Shell BP Petroleum Development Company v Federal Board of Inland Revenue NOGC 1 [1961-1965] 90 FRC

Shell International v FBIR [2004] 3 NWLR (Pt 859) 46

Shell Nigeria Exploration & Production Co. Ltd & 3 Ors v FIRS & Anor (2013) 11 TLRN 45

Shell Petroleum Development Co Nigeria Ltd v Bayelsa State Board of Internal Revenue 7 All NTC vol. 7.

Shell Petroleum Development Company (Nig) Ltd v Federal Board of Inland Revenue [1996] 8 NWLR (Pt 466) 256

Shell Petroleum Development Company of Nigeria Ltd v FIRS [2016] 26 TLRN 98

Shell International Petroleum Mattschappij BV v FBIR (2011) 4 TLRN 97.

Shell Petroleum Development Company (Nig.) Ltd v Federal Board of Inland Revenue NOGC 2 [1996-2000] 80 SC

Shell Petroleum Development Company Nigeria Ltd v Bayelsa State Board of Internal Revenue 7 All NTC, Vol 7

South Atlantic Petroleum Coy Ltd v FIRS [2012] 6 TLRN 1

South Atlantic Petroleum Limited v Minister of Petroleum Resources NOGC 6 [2007-2008] 245

South Atlantic Petroleum Ltd v Minister of Petroleum Resources [2006] 10 CLRN 122

South Atlantic Petroleum Ltd v. Minister of Petroleum Resources (2019) LCN/12662(CA).

SPDC v FBIR(1976) 2 FRCR 39 & (1996) 8 NWLR (Pt 466) 261

SPDCN Ltd v. Amaro 2015 12 NWLR (Pt. 1472), 122.

Star Deep Water Petroleum Ltd v FIRS [2016] 23 TLRN 14

Statoil (Nig) Petroleum v Nigeria National Petroleum [2014] 15 TLRN 1

Statoil (Nigeria) Ltd and Texaco Nigeria Outer Shelf Ltd v FIRS [2016]24 TLRN 13

Sweet Sensation Confectionaries v FBIR FHC/UCS/826/04

Tetra Pak West Africa Ltd v FIRS – Consolidated appeal Nos; TAT/LZ//EDT/031/2015, TAT/LZ/CIT/032/2015, TAT/LZ/EDT/033/2015.

The Queen v Urhobo Rating Authority [1 NTC 76]

Togun v Oputa (2001)16 NWLR (pt. 740) page 597 at 644

Tope Alabi v FRSC (FHC/L/CS/123/13

Total Exploration & Production Nig. Ltd. & Ors. V. Federal Inland Revenue Service (unreported) TAT/LZ/010/2013

TSKJ II Construces v FIRS [2014] 13 TLRN 1

Williams v Adelaja [1 NTC 141]

**CASES - CANADA**

Re Accel Canada Holdings Limited 2020 ABQB 182

Canadian Industrial Gas and Oil Limited v Government of Saskatchewan et al [1978] 2 SCR 545

Coldwater Indian Band et al v Attorney General of Canada, 2020 FCA 34

Tsleil-Waututh Nation v Canada (Attorney General), 2018 FCA 153

United States v. Sanchez-Gomez, No. 13-50561 (9th Cir. 2017)

**CASES - UNITED KINGDOM**

Adamson v Attorney General [1933] AC 257

Astor v Perry [1935] AC 398: [1935] All ER Rep 713

Camdim Eagle Oil Co. v. R. [1946]1 A.C. 119

Cape Brandy Syndicate v. I.R.C [1921] 1 K.B. 64, 71.

CIT v Ajax Products Ltd [1965] 55 ITR 741

Coltness Iron co v Black [1881] LR 6 AC 315 (HL)

Grey v Pearson (1857) 6HLC 61 at 106.

IRC v Ayrshire Employers Mutual Insurance Assn Ltd [1946] 1 All ER 637

IRC v Duke of Westminster [1936] AC 1: [1935] All ER Rep 259 (HL)

Lawson v Interior Tree [1931] SCR 357 (SCR 357)

Luke v IRC [1963] AC 557

Mangin v. I.R.C. [1971]1 A.C. 739

Mapp v. Oram [1970] 1 A.C. 362

Mathews v Chicory Marketing Board [1938] CLR 263

Ormond Investment co Ltd v Betts [1928] AC 143: [1928] All ER Rep 709 (HL)

Pryce v Monmouthshire Canal and Railway [1879] LR 4 AC 197 (HL)

Tennant v. Smith (1891) A.C. 150, 154.

Seaford Court Estates v Asher [1949] 2 KB 481

**LEGISLATION - NIGERIA**

Arbitration and Conciliation Act 2004

Associated Gas Reinjection Act, 1979 CAP A25 Laws of the Federation 2004

Budget Responsibility and National Audit Act 2011.

Capital Gains Tax Act Cap C1 2004 LFN

Capital Gains Tax Act 2004

Companies and Allied Matters Act 2004

Companies and Allied Matters Act 2004

Companies Income Tax (Significant Economic Presence) Order, 2020

Companies Income Tax Act (CITA), Cap C21, LFN 2004.

Companies Income Tax Act 1979

Constitution of the Federal Republic of Nigeria 1999

Deep Offshore and Inland Basin Production Sharing Contract Act 1993 CAP D3, LFN 2004

Education Tax Act No.7 of 1993

Federal Inland Revenue Service Establishment Act 2007

Finance Act of Nigeria 2021

Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws of the Federation of Nigeria 2004

International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, 2004

Lagos State Local Government Levies (Approved Collection List) Law 2012

Mineral Oils Act (Cap 120)

Motor Spirits (Returns) Act, CAP M20 Laws of the Federation of Nigeria 2004

National Information Technology Development Act 2004

Native Revenue Ordinance 1917

Niger Delta Development Commission (Establishment etc.) Act 2000, CAP No 6, Laws of Federation.

Nigeria Liquefied Natural Gas, LNG (Fiscal Incentives, Guarantees and Assurances) Act 1990

Nigerian Content Monitoring Board Act (NLCD Act).

Nigerian Export Free Zone Act No.8 of 1996

Nigerian Extractive Industries Transparency Initiative Act 2007

Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAP N124 Laws of the Federation of Nigeria 2004

Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33 CAP N123 Laws of the Federation of Nigeria as amended.

Nigerian Oil and Gas Industry Content Development Act, 2010

Onne Oil and Gas Export Free Trade Zone Act 1996

Petroleum Act 1969

Personal Income Tax Act 2004

Petroleum (Drilling and Production) Regulations 1969

Petroleum Equalization Fund (Management Board etc.) Act No. 9 of 1975

Petroleum Industry Act (PIA) 2021.

Petroleum Industry Bill (PIB) 2008,

Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003

Petroleum Profit Tax Act 1959

Petroleum Profits Tax Act (PPTA), Cap P13, LFN (2004).

Petroleum Profits Tax Act 1999

Production Sharing Contracts (PSC) Act.

Police Service Commission Act 1999

Pre-Shipment Inspection of Oil Export Act, 1996

Provisions of the Pre-shipment Inspection of Oil Export Act, 1966

Stamp Duties Act 2004

Tax Appeal Tribunals (Establishment) Order 2009 (Nigeria)

Taxation (International and Other Provisions) Act 2010

Taxes and Levies (Approved List for Collection) Act no 2, 1998

The Taxes and Levies (Approved List for collection) Amendment Order 2015.

Tertiary Education Trust Fund (Establishment, etc.) Act 2011

The Nigeria Liquefied Natural Gas (Fiscal Incentives Guaranties and Assurances etc.) Act, Chapter N87, Laws of Federation of Nigeria 2004.

The Nigeria National Tax Policy (NNTP), 2012.

United Nations Convention on the Law of the Sea -1982.

Value Added Tax Act No.102 of 1993

**LEGISLATION - CANADA**

British North America Act

Canada Oil and Gas Operations Act

Canada Petroleum Resources Act

Canadian Petroleum Resources Act (R.S.C., 1985, c.36 (2nd Supp)).

Canada Oil and Gas Operations Act (RSC, 1985, c.O-7,

[Oil & Gas Laws and Regulations Canada 2023 - ICLG.ccom](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjS0IzYktyAAxVjVUEAHcoQAEoQFnoECA0QAw&url=https%3A%2F%2Ficlg.com%2Fpractice-areas%2Foil-and-gas-laws-and-regulations%2Fcanada%23%3A~%3Atext%3DFor%2520example%252C%2520in%2520the%2520province%2Cheld%2520by%2520corporations%2520or%2520trusts.&usg=AOvVaw1Luw0SIqVLCt6k3gl1s5y6&opi=89978449)

Federal Income Tax Act

Companies’ Creditors Arrangement Act.

Constitution Act 1867

Constitution Act 1867 (Canada)

Constitution Act, 1867 (British North American Act).

Corporation Tax Act 2009 (Canada)

Corporation Tax Act 2010 (Canada)

Environmental Management Act (British Columbia), 2019 BCCA 181.

The Mineral Resources Act, 1973-74 (Sask.), c. 64 (Bill 127)

The Petroleum and Natural Gas Regulations, 1969, under The Mineral Resources Act

National Energy Board Act (Canada)

Natural Resources Act of 1930 (Canada)

The Oil and Gas Conservation Stabilization and Development Act 1973-1974 (Canada)

**LEGISLATION - UNITED KINGDOM**

Capital Allowance Act 2001

Finance Act 2008 (UK)

Finance Act 2012 (UK)

Finance Act 2015 (UK)

Finance Act 2016 (UK)

Income Tax (Earnings and Pensions) Act 2003

Income Tax (Trading and Other Income) Act 2005

Income Tax Act 2007

Income Tax and Social Services Contribution Assessment Act 1964

Oil Taxation Act 1975 (UK)

Oil Taxation Act 1983 (UK)

Ordinance No. 3 1863

Petroleum Revenue Tax Act 1980

Petroleum Royalties (Relief) Act 1983

Petroleum Royalties (Relief) and Continental Shelf Act 1989

**AGREEMENTS, GUIDANCE NOTES, BILLS AND POLICY DOCUMENTS**.

A Guide to UK Taxation, May 2019

Amendments to The Petroleum and Natural Gas Regulations, 1969, made under The Mineral Resources Act

Associated Gas Framework Agreement (AGFA) 1995.

Australian Tax Policy

Bill C-259, An Act to amend the Income Tax Act

Budget 2016, HC 901, (PDF) March 2016

Canada 2022-Energy Policy

Canada, House of Commons, Standing Committee on Finance, Trade and Economic Affairs, Eighteenth

Canada’s Foreign Investment Protection Agreements;’

Canada's Proposals for Tax reform, 1969. (Department of Finance)

Canadian Tax Policy.

Eighth report: principles of tax policy, HC 753, (PDF) 15 March 2011 para 84.

HM Treasury press notice, Radical reforms for oil and gas industry, 4 December 2014

HM Treasury, Energy Profits Levy Factsheet, 26 May 2022.

HM Treasury, Review of the oil and gas fiscal regime: call for evidence, (PDF) July 2014 p 6. P12-14.

HMRC, Corporation tax: oil and gas companies: investment allowance and reduction in supplementary charge – tax information note, 18 March 2015

HRMC Oil Taxation Manual

HRMC Oil Taxation Manual - OT00150

Joint Audit and the Mutual Agreement Procedure (MAP).

Memorandum of Understanding (MOU) between the IOC’s and the NNPC

Mission & Vison, (Nnpcgroup.com, 2017), <http://www.nnpcgroup.com/AboutNNPC/MissionVision.aspx> accessed 5 August 2017.

National Domestic Gas Supply & Pricing Regulation.

National Energy Policy (2003).

National Oil and Gas Policy (NOGP) of 2007.

Nigeria Petroleum Industry Bill (NPIB), 2008.

Nigerian National Tax Policy (NNTP), 2012.

Nigerian National Tax Policy (NNTP) 2016

National Oil Policy Draft Consultative document 2017.

Nigeria National Gas Policy 2017

Nigeria National Oil Policy 2017

National Petroleum Fiscal Policy 2017

Petroleum Fiscal Framework Bill

Petroleum Industry Bill 2012

Petroleum Industry Governance Bill 2017

Spring Finance Bill 2023

Standing Orders of the House of Commons

The Kyoto Protocol,

The Memorandum of Understanding (MOU) between IOC’s and the FG.

The NOGP (National Oil Policy) (2016),

**APPENDIX** I

**SURVEY QUESTIONNAIRE**

1. Email \*

1. Mark only one oval.

Option 1

1. Markonly one oval.

Option 1

**RESEARCH TOPIC – TAX POLICY AND TAX LEGISLATION IN THE NIGERIAN UPSTREAM OIL AND GAS INDUSTRY: ACHIEVING CERTAINTY, CLARITY, AND CONSISTENCY**

The survey is being undertaken by Mr. Edem Andah, towards his thesis in the subject of Taxation Law, at the School of Advanced Studies (SAS), University of London.

The survey of critical stakeholders in the Nigeria upstream oil and gas industry is in five (5) sub-sections. Each section has specific questions about certainty or uncertainty in fiscal and tax policy, tax legislation, tax law interpretation and administration. It also asks questions on the judicial process for achieving clarity, certainty and consistency (CCC) in tax law interpretation.

On the scale of 5 to 1, please use 5 when the factor is extremely important or significant, and lower numbers when it is progressively less important or significant, in ascertaining tax policy and legislation certainty.

We are very grateful for your time and support in completing this survey and thank you very much for agreeing to give your views. Individual answers will remain confidential.

Edem Andah Professor Philip Baker QC.

PhD Research Student Research Supervisor

**SURVEY QUESTIONNAIRE**

Upstream Petroleum Taxing Regime

In this section, we are seeking to identify the factors and requirements for achieving clarity, certainty, and consistency (CCC) in fiscal and tax policy design, tax legislation making and administration.

1. 1. In your experience, how important is regular and transparent engagement between the relevant agencies of government and taxpayers in the annual budgeting and fiscal objectives setting for achieving clarity, certainty, and consistency of understanding of Nigeria upstream oil and gas tax legislation and compliance.

*Mark only one oval.*

1 2 3 4 5

1. 2. In your experience how essential or important is clear policy articulation in drafting clear upstream oil and gas tax legislation.

*Mark only one oval.*

1 2 3 4 5

1. 3. Clear fiscal policy objectives, principle driven tax policy, and drafting competence by the relevant ministries and agencies, i.e. Ministry of Petroleum Resources (MPR), Finance (MoF), Justice (MoJ), the Nigeria National Petroleum Corporation (NNPC), and the National Assembly (NA), play a vital role in making and drafting clear and certain upstream petroleum tax laws.

*Mark only one oval.*

1 2 3 4 5

1. 4. In your experience, how important is the use of appropriate and well-defined words and concepts in achieving clarity and certainty in upstream oil and gas fiscal and tax policy and tax legislation.

*Mark only one oval.*

1 2 3 4 5

1. 5. The allocation of fiscal and taxing powers between the federating units in Nigeria and the competition for revenue capture impacts tax law making and collection, as well as the clarity, certainty, and consistency of understanding of the Upstream petroleum tax legislation.

*Mark only one oval.*

1 2 3 4 5

1. Please add any other comments below\_1:

**Constitutional and Statutory Framework and Regulations**

In this section, we are seeking to understand how the 1999 Nigerian Constitution and the interaction of the Upstream Taxing legislation with other principal and subsidiary tax legislations, affect certainty, clarity and consistency in the understanding and interpretation of Upstream oil and gas taxation.

Again, please use the scale of 5 to 1, to indicate the degree of the importance or significance of these factors.

1. 6. In your view, to what extent does the ownership structure of petroleum resources and the allocation of fiscal and taxing powers under the 1999 Nigerian Constitution affect clarity, certainty and consistent interpretation and administration of upstream oil and gas taxation.

*Mark only one oval.*

1 2 3 4 5

1. 7. In your opinion, to what extent does the existence and interaction of fiscal regimes, taxing legislation, extra statutory agreements and directives in the Upstream oil and gas tax system impact and affect clarity, certainty and consistent interpretation and understanding of upstream oil and gas taxation?

*Mark only one oval.*

1 2 3 4 5

1. 8. In your opinion how important is the age of the various petroleum taxing statutes, and the infrequent or delayed tax policy and tax law reform in achieving clarity, certainty and consistent understanding of upstream oil and gas tax legislation interpretation and administration.

*Mark only one oval.*

1 2 3 4 5

1. 9. In your experience, to what extent do ad-hoc fiscal incentives introduced to the PPTA, and piecemeal amendment of the PPTA, as well as the extra-legal agreements, impact clarity, certainty and consistency in understanding and interpretation of upstream oil and gas tax statutes.

*Mark only one oval.*

1 2 3 4 5

1. Please add any other comments below\_2:

The Tax Authority and the Tax Payer understanding of Tax legislation.

The desire of Revenue Authorities to achieve revenue targets and increase government take and the desire for tax optimization by Tax Advisers and Tax payers, invariably result in differences in understanding and interpretation of Upstream oil and gas tax legislation.

Again, on a scale of 5 to 1, with 5, indicating extremely important or significant, please indicate the importance of these factors.

15. 10. To the understanding and consistent application of tax legislation by both the tax authority and tax payers. In your opinion how important is this for achieving clarity and certainty?

*Mark only one oval.*

1 2 3 4 5

1. 11. For effective tax compliance, how important is it for taxing provisions, words and concepts to be clearly defined and principle based?

*Mark only one oval.*

1 2 3 4 5

1. 12. To what extent does the interaction of different tax rates and fiscal systems in the Nigeria Petroleum tax system over the years, i.e. (65.75%, 85%, 50% or 30%), affect clarity and certainty in Nigeria upstream oil and gas taxation?

*Mark only one oval.*

1 2 3 4 5

1. 13. In your view how significant or important is the introduction of the two tier hydrocarbon and corporate income tax regime to Nigeria upstream oil and gas taxation by Petroleum Industry Act (PIA), on the effective tax rate (ETR), as well as the clarity, certainty and consistent understanding and administration of upstream oil and gas taxation.

*Mark only one oval.*

1 2 3 4 5

1. 14. In your experience, how important are clear FIRS circulars and guidelines which are consistent with tax legislation, in achieving clarity, certainty and consistent understanding of Nigeria upstream oil and gas tax legislation.

*Mark only one oval.*

1 2 3 4 5

1. Please add any other comments below\_3

Tax Adjudication and Dispute Resolution Process.

In this section, we are seeking to understand how significant the tax Adjudication process and the implementation of a transparent and independent dispute resolution process is for achieving tax law and tax system clarity and certainty.

Again, please indicate on a scale of 5 to 1, the importance or significance of these factors:

1. 15. In your experience, how important is it for judicial officers, the Tribunals and the Courts, to have adequate understanding of taxation principles and upstream tax legislation, in achieving clarity and consistent application of upstream oil and gas tax Legislation.

*Mark only one oval.*

1 2 3 4 5

1. 16. In your opinion, how important is a well-defined, transparent tax appeal process and timely tax dispute resolution for determining tax law clarity, certainty and consistent understanding of the Upstream oil and gas taxation.

*Mark only one oval.*

1 2 3 4 5

1. 17. In your experience, how clear and consistent are the recent judicial decisions affecting upstream petroleum taxation and how important are these in achieving upstream oil and gas tax legislation certainty.

*Mark only one oval.*

1 2 3 4 5

1. Please add any other comments below\_4:

Fiscal and Tax Policy and Tax Law reform.

In this section, we are seeking to understand how important or significant it is to have regular, timely and sustained petroleum fiscal and tax policy review and tax law reform and law change or amendment to achieve clarity, certainty, and consistency of understanding of Upstream oil and gas tax system.

Again, on a scale of 5 to 1, please indicate the degree of importance of these factors.

1. 18. In your experience, how significant or important is regular structured fiscal and tax policy review, tax law reform and tax law amendment, in achieving clarity and certainty in Upstream petroleum taxation.

*Mark only one oval.*

1 2 3 4 5

1. 19. In your opinion, to what extent has the delay in fiscal and tax policy and tax law reform contributed to creating uncertainty in investment decision making in the Nigerian oil and gas tax sector?

*Mark only one oval.*

1 2 3 4 5

1. 20. In your opinion, how important are the combination of fiscal regimes and the different tax systems and rates under the PIA, for offshore and onshore petroleum operations in achieving clarity, certainty and effective compliance?

*Mark only one oval.*

1 2 3 4 5

Please add any other important comments below\_5:

1. Please tick the box that most closely describes your work.

*Check all that apply.*

Financial Officer

Tax Administrator

Government Official

Tax Department of a business or Company Professional Adviser

Legal officer Judicial Officer

Other (Please specify)

1. Please specify\_1
2. Please specify\_2

ZOOM Call

1. If you are willing to participate in a brief one to one call or zoom meeting with the researcher, kindly indicate in the box below, and provide your contact details:

*Check all that apply.*

Yes No

**APPENDIX** I I



**SURVEY QUESTIONNAIRE RESPONSES**

79 responses

[Publish analytics](https://docs.google.com/forms/d/1HczRnnyvp2oCRtce6UewNpVjKPFp2_ExkOTXx-YMeto/edit" \l "start%3Dpublishanalytics)

1 response

Copy

Option 1

100%

0 responses

No responses yet for this question.

RESEARCH TOPIC–TAX POLICY AND TAX LEGISLATION IN THE NIGERIAN

UPSTREAM OIL AND GAS INDUSTRY: ACHIEVING CERTAINTY, CLARITY, AND CONSISTENCY.

SURVEY QUESTIONNAIRE

Upstream Petroleum Taxing Regime

1. In your experience, how important is regular and transparent engagement between the relevant agencies of government and tax payers in the annual budgeting and fiscal objectives setting for achieving clarity, certainty and consistency of understanding of Nigeria upstream oil and gas tax legislation and compliance.



76 responses

Copy

60

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | | | | 59 (77.6%) |  |
|  | | | |  |
|  | | | |  |
|  | | | |  |
|  | | | |  |
| 0 (0%) 2 (2.6%) | | 10 (13.2%) |  |  |
|  | 5 (6.6%) |

40

20

0

1 2 3 4 5

1. In your experience how essential or important is clear policy articulation in drafting clear upstream oil and gas tax legislation.
2. responses

Copy

80

60

61 (81.3%)

40

20

0 (0%) 0 (0%) 2 (2.7%)

12 (16%)

0

1 2 3 4 5

1. Clear fiscal policy objectives, principle driven tax policy, and drafting competence by the relevant ministries and agencies, i.e. Ministry of Petroleum Resources (MPR), Finance (MoF), Justice (MoJ), the Nigeria National Petroleum Corporation (NNPC), and the National Assembly (NA), play a vital role in making and drafting clear and certain upstream petroleum tax laws.



1. responses

Copy

60

40

56 (73.7%)

20

0 (0%)

0

1 (1.3%)

6 (7.9%)

13 (17.1%)

1 2 3 4 5

1. In your experience, how important is the use of appropriate and well defined words and concepts in achieving clarity and certainty in upstream oil and gas fiscal and tax policy and tax legislation.

75 responses

Copy

80

60

62 (82.7%)

40

20

0 (0%)

0

0 (0%) 3 (4%) 10 (13.3%)

1 2 3 4 5



5. The allocation of fiscal and taxing powers between the federating units in Nigeria and the competition for revenue capture impacts tax law making and collection, as well as the clarity, certainty and consistency of understanding of the Upstream petroleum tax legislation.

76 responses

Copy

40

30

20

10

0 (0%)

2 (2.6%)

0

1

2

3

4

5

25 (32.9%)

16 (21.1%)

33 (43.4%)



Please add any other comments below\_1:

15 responses

The very last point is a particularly worrisome issue which often exposes tax payers to multiple levels of taxation and sometimes on the same head, but disguised under various names, by the different levels of government.

The Petroleum Industry Act (PIA) introduced significant changes in the upstream petroleum tax regime in Nigeria . Whilst the adequacy of clarity, certainty and consistency introduced in the PIA will be determined with time, what is worth noting is that stakeholders engagement played a significant role in the passage of the PIA. However, to ensure that the fiscal objectives of clarity, certainty and consistency are achieved, there is a need for the fiscal authorities, other governmental agencies and taxpayers to constantly engage with a view to reshaping and revising any grey area that have not been addressed or new areas that pose changes in their application/implementation.

For #1 above, it is very important for relevant government agencies and tax payers to have continuous engagement. This is one of the ways to avoid having tax policies that are not people oriented and totally inapplicable to the tax payers.

The development of the industry in Nigeria has been fraught with a myriad of challenges that are primarily linked to the lack of integrity between government and other stakeholders and also the lack clarity in fiscal and taxing powers of the government.

The allocation of fiscal and taxing powers the federating units in Nigeria and the federal government does have an impact of clarity and certainty in tax legislation but I am of the view that the issue of lack of clarity in our tax legislation is as a result of poor legislative drafting that is usually borne out of the lack of knowledge of the principles underpinning legislative drafting by drafters of our tax legislation. This applies to most legislation in Nigeria. Properly trained and experienced legislative draftsmen as usually not engaged to draft tax legislation in collaboration with very knowledgeable and experienced tax practitioners and academics.

Taxation of the Upstream Oil & Gas Industry is an area that requires specialist knowledge and even a measure of expertise. It is doubtful that sufficient skills exist amongst the identified key stakeholders to enable efficiency, in this regard.

None

There is so much opacity in the oil and gas industry such the rules and regulations are observed more in the breach. Rules are generally interpreted in ways that do not serve the common good but are tailored to suit particular interests that do not serve the public interest.

There is much room for improvement in taxation principles and policies and allocation of scope and power between the different levels of government and taxation authorities

The National Tax Policy (NTP) is a keystone in evolving a tax system that addresses the challenge of fiscal federalism, taxing rights and revenue sharing among other fiscal related issues that plague the Nigerian economy at both micro and macro levels. The NTP should not

become a redundant policy document or reference tool only for academics. The NTP should be the “bible” that guides the thinking, formulation and execution of strategies relevant to taking tax administration at all levels (assessment, collection etc) and the tax system at large to optimum heights.

I've assumed that the questions do not relate to the current state of affairs.

In my experience, ambiguity in wordings of tax statutes has often led to difficult tax interpretation. It is therefore important that clear legislative drafting is adopted incorporating simple and easy-to-understand language. This makes it relatively easy for the taxpayers to understand and interpret in managing their individual tax affairs

All the above parameters are of utmost significance in achieving clarity, certainty and consistency

The impact of 5 is negative. Expertise on taxation of minerals including petroleum is lacking in Nigeria in academia, tax administration and practice . This is partly responsible for lack of sustainable growth in the sector.

the interplay of interests between the various tiers of government is a big issue in tax policy and fiscal formulations

Constitutional and Statutory Framework and Regulations



6. In your view, to what extent does the ownership structure of petroleum resources and the allocation of fiscal and taxing powers under the 1999 Nigerian Constitution affect clarity, certainty and consistent interpretation and administration of upstream oil and gas taxation.

76 responses

Copy

30

20

10

0

1

2

3

4

5

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | | | 30 (39.5%) |  | | |
|  | | | | |  | | |
|  | | | | |  | 20 (26.3%) |  |
|  | | | 18 (23.7%) |  |
|  | | |  |  |  |
|  | | |  |  |  |
| 3 (3.9%) | 5 (6.6%) |  |  |  |  |

1. In your opinion, to what extent does the existence and interaction of fiscal regimes, taxing legislation, extra statutory agreements and directives in the Upstream oil and gas tax system impact and affect clarity, certainty and consistent interpretation and understanding of upstream oil and gas taxation?



75 responses

40

Copy

30

31 (41.3%)

33 (44%)

20

10

1 (1.3%)

0

3 (4%)

1 2 3 4 5

7 (9.3%)

1. In your opinion how important is the age of the various petroleum taxing statutes, and the infrequent or delayed tax policy and tax law reform in achieving clarity, certainty and consistent understanding of upstream oil and gas tax legislation interpretation and administration.

75 responses

Copy

40

30

36 (48%)

20

24 (32%)

10

0 (0%)

0

1 (1.3%)

1 2 3 4 5

14 (18.7%)



9. In your experience, to what extent do ad-hoc fiscal incentives introduced to the PPTA, and piecemeal amendment of the PPTA, as well as the extra-legal agreements, impact clarity, certainty and consistency in understanding and interpretation of upstream oil and gas tax statutes.

75 responses

Copy

30

20

10

0 (0%)

0

1

2

3

4

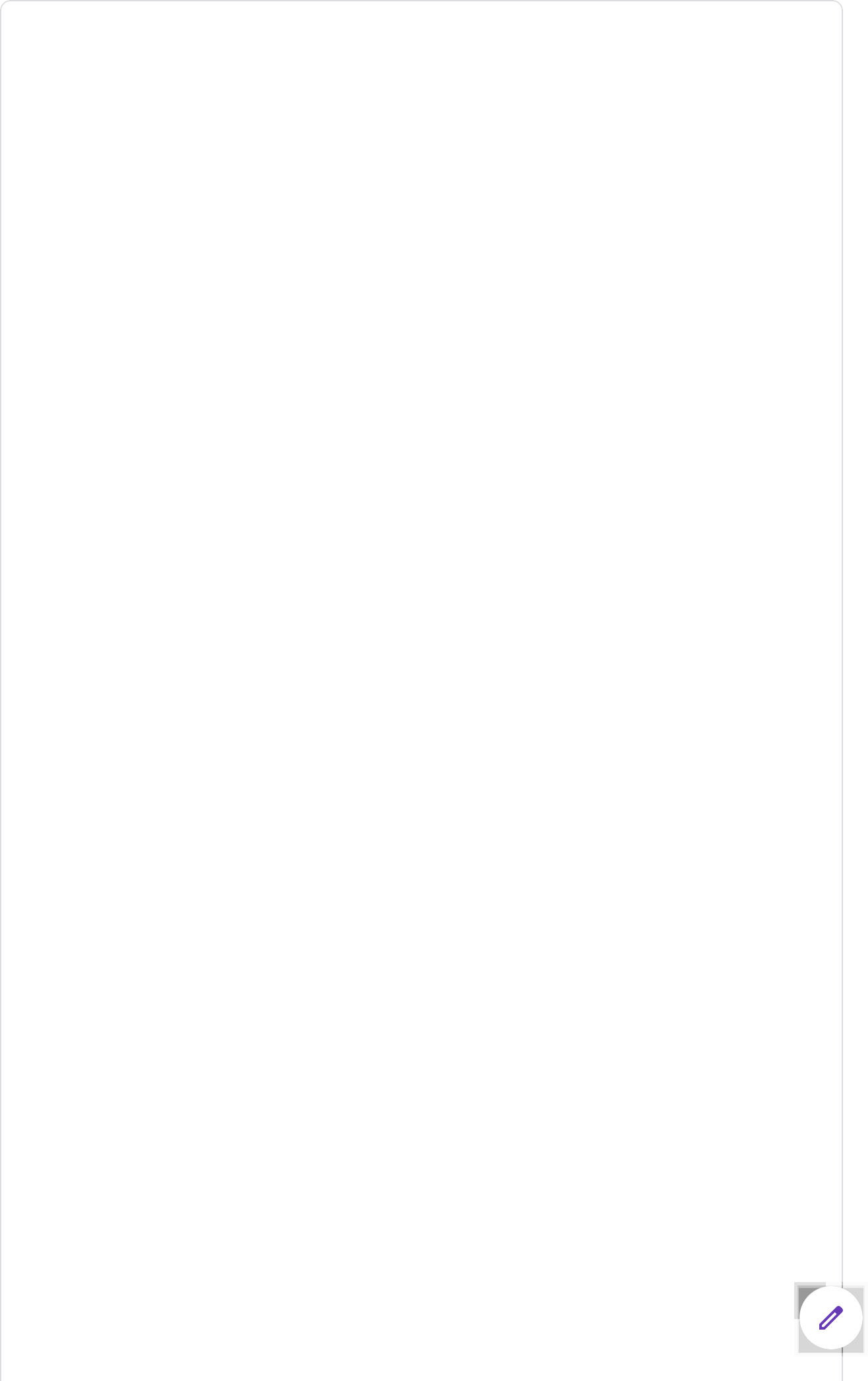
5

6 (8%)

18 (24%)

23 (30.7%)

28 (37.3%)

Please add any other comments below\_2:

15 responses

The introduction of piecemeal legislation more often than not brings about conflict in interpretation which impacts on the ability to achieve certainty

Hopefully, the PIA has addressed some of the issues with piecemeal amendments o the PPTA

Fiscal uncertainty has been the bane for the development of the industry. Amendments consistent with realities across the industry should provide certainty in the fiscals for the Sector.

Piecemeal and ad-hoc fiscal incentives have appeared to be a fire brigade approach - which is problematic. A holistic approach is encouraged, and this holistic approach seems to be that taken in implementing the PIA.

The 1999 Constitution provisions re-stating FGN ownership of Petroleum resources is pivotal in determining the structure of Upstream O&G taxation policy and practices. However, the initial PPTA (1958) predates the 1999 Constitution and even the Petroleum Act 1969, which similarly confers ownership of Petroleum resources upon the FGN. In my experience, it may be somewhat challenging to reflect the amendments and revisions made subsequent to the initial passage of a piece of legislation, seamlessly. Oftentimes, the subsequent piece of legislation is published on its own, whilst highlighting the aspects of the foundational legislation, which have been amended. Of course, this results in various aspects of the subject-matter of the legislation being scattered "here" and "there", which negatively impacts clarity and certainty. I observed, whilst studying a particular subject-matter (not Taxation), from the perspective of another jurisdiction (not Nigeria), that the text of the original principal legislation is maintained, and subsequent amendments and revisions to various aspects of the legislation are inserted into the original text, with appropriate identifications.

The piecemeal amendment of the PPTA as well as the piecemeal amendments and extra-legal agreements help in understanding the interpretation of the PPTA

Ad hoc fiscal incentives are not by themselves bad. The challenge comes are discriminatory and not generally applicable to all companies facing the same challenges and are operating under the same circumstances and challenges. nat

The PPTA may no longer be the applicable law in the light of the PIA except for license holder yet to convert.

The answers need to take into consideration the new Petroleum Industry Act and what impact it has in bringing some clarity on the taxation principles and policies for upstream operations

Prior to the passage of the PIA, one of the issues that undermine clarity, certainty and consistency in understanding and interpretation of upstream oil and gas statutes is the mischief of agencies with quasi-regulatory functions.

the piece meal amendments and side letters impacted the certainty of some aspect of the regime. i suppose the PIB sought to address some of these issues. Additionally, the delay has affected Nigeria negatively in our economy and drive for investment. This gives credence to need for prompt and certain provisions. uncertainty is the biggest risk investors do not like to

take

The piecemeal amendment to the PPTA often complicates a thorough and exhaustive understanding of the petroleum taxes- the result being that the taxpayers often wage through numerous documents to figure out the current tax position. It is thus critical to avoid such

piecemeal amendments and make a uniform, joint amendment to the legislation.

none

in some cases the ad-hoc fiscal incentives are couched in sophisticated mathematical

template that do not lead to ease of understanding for most tax professionals

adhoc policies are often in conflict with the PPTA



10. Principle driven tax policy and legislation making and interpretation are key to the understanding and consistent application of tax legislation by both the tax authority and tax payers. In your opinion how important is this for achieving clarity and certainty?

75 responses

Copy

60

40

20

0

1

2

3

4

5

11 (14.7%)

%)

0 (0%)

0 (0%)

4 (5.3

60 (80%)

The Tax Authority and the Tax Payer understanding of Tax legislation.

1. For effective tax compliance, how important is it for taxing provisions, words and concepts to be clearly defined and principle based?



75 responses

Copy

80

60

69 (92%)

40

20

0 (0%) 0 (0%)

0

2 (2.7%)

4 (5.3%)

1 2 3 4 5

1. To what extent does the interaction of different tax rates and fiscal systems in the Nigeria Petroleum tax system over the years, i.e. (65.75%, 85%, 50% or 30% ), affect clarity and certainty in Nigeria upstream oil and gas taxation?

75 responses

Copy

30

20

22 (29.3%)

28 (37.3%)

10

16 (21.3%)

2 (2.7%)

7 (9.3%)

0

1 2 3 4 5

1. In your view how significant or important is the introduction of the two tier hydrocarbon and corporate income tax regime to Nigeria upstream oil and gas taxation by Petroleum Industry Act (PIA), on the effective tax rate (ETR), as well as the clarity, certainty and consistent understanding and administration of upstream oil and gas taxation.



75 responses

Copy

40

30

33 (44%)

20

25 (33.3%)

10

2 (2.7%)

0

3 (4%)

1 2 3 4 5

12 (16%)

1. In your experience, how important are clear FIRS circulars and guidelines which are consistent with tax legislation, in achieving clarity, certainty and consistent understanding of Nigeria upstream oil and gas tax legislation.

75 responses

Copy

60

40

44 (58.7%)

20

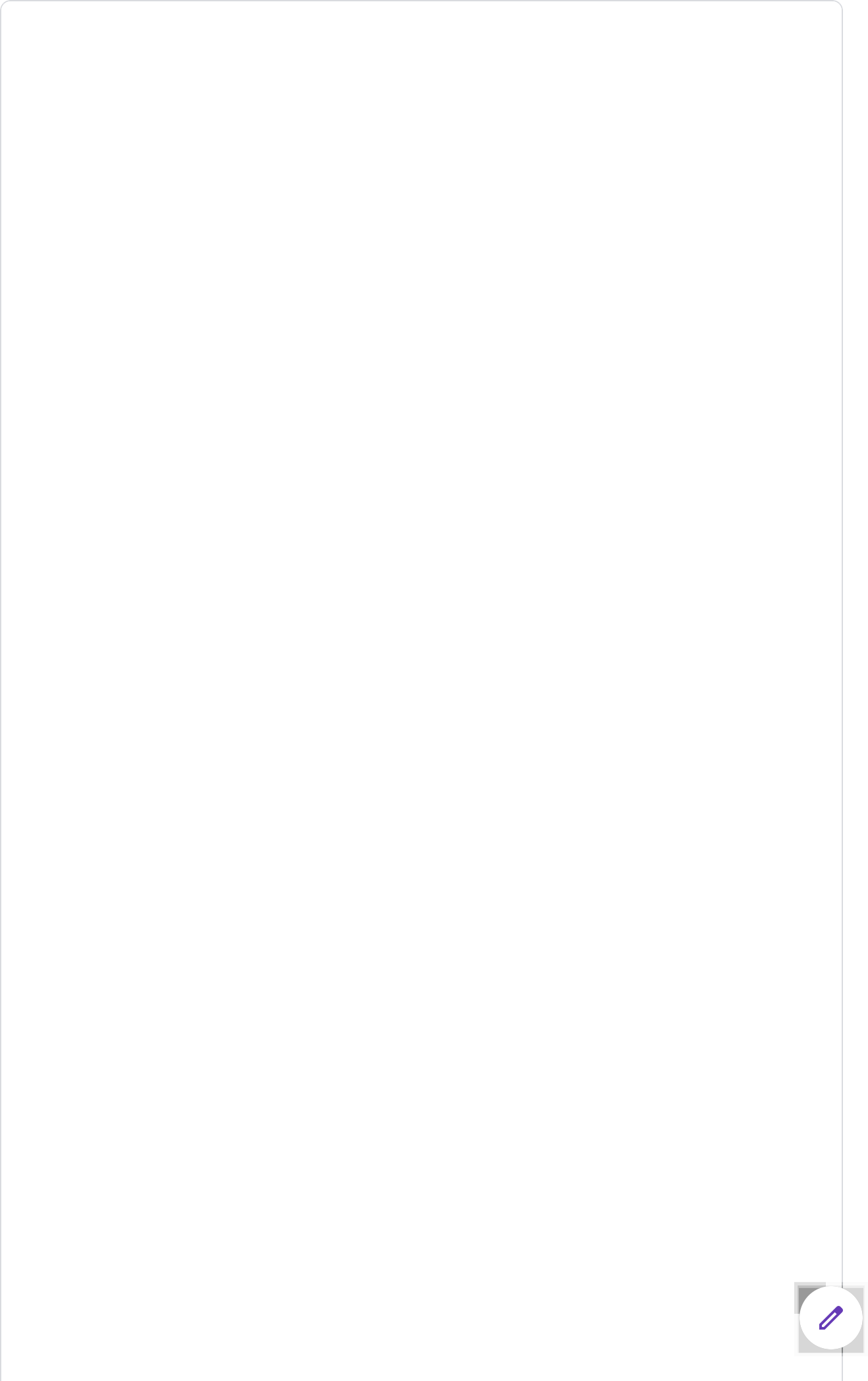
1 (1.3%)

10 (13.3%)

15 (20%)

0 5 (6.7%)

1 2 3 4 5



Please add any other comments below\_3:

14 responses

FIRS circulars are usually one sided as the taxman seeks to adopt a position that helps with revenue maximization. The court has also disregarded those circulars in the past thus it fails to provided required certainty

FIRS circulars are important in providing further clarity to tax laws. Unfortunately, some of these circulars tend to create further confusions for tax payers as they are at variance with the underlying tax laws.

The passage of the PIA, if effectively administered should provide clarity around fiscals and also harmonize fiscals across the value chain. However, there should be clears operational guidelines which should provide clear guidelines on the administration of the fiscals given some grey areas within the Act.

In my (modest) experience advising on tax compliance, the understanding and interpretation of Upstream oil and gas tax legislation is at a fairly low level, by both the tax authorities and tax payers. I do not know if this is intentional on the part of the tax authorities, so that they are able to impose their own (limited) understanding on the taxpayer. I have had a recent experience in which a particular tax authority imposed its own interpretation of a piece of tax legislation on a corporate entity, with the threat of sealing up the business, if that interpretation is not complied with. I think there is still a very long way to go, with attaining a just and balanced approach, in this regard.

From my practical experience as a tax administrator in the oil and gas sector, clarity of understanding of the intricacies of the oil and gas industry was essential for proper tax administration. But through frequent and intensive training and engagement with the industry operators, the gaps were bridged. It is even significant to observe that I had the privilege of proposing the dual fiscal regime of the recently passed Petroleum Industry Act. This was informed by my experience at the Oil and Gas Tax Office.

The answer to question 13 could be different if question 13 is split into 2 - separate impact on ETR and Clarity, certainty and Consistency.

Transparency and engagement with critical stakeholders is important to achieve the desired consistency, clarity and common understanding

Whilst FIRS circulars and guidelines instruct the taxpayers on the thinking of the FIRS, they are not binding on the FIRS and are also not law

the differin tax rates and fiscal regimes in itself does not affect certainty - it just requires players to understand the regime as different from general rules.Players in the industry knew the rules in the legislation and applied it appropriately - the challenges were similar to those applicable to general companies with one single regime.. side letters that are not made public were a major issue in consistency.

In my experience, FIRS circulars often provide useful guide to tax practitioners in interpreting certain ambiguous provisions of the tax legislation and the practice has offered utility to tax

interpretation space which, I believe, should be continued.

The two tier regime introduced in the PIA creates more complexity and less clarity.

none

sometimes the FIRS circulars and guidelines add to the confusion; sometimes contain

ambiguous languages and lack clarity

FIRS Circulars are not law and do not create legitimate expectation

Tax Adjudication and Dispute Resolution Process.



15. In your experience, how important is it for judicial officers, the Tribunals and the Courts, to have adequate understanding of taxation principles and upstream tax legislation, in achieving clarity and consistent application of upstream oil and gas tax Legislation.

75 responses

Copy

80

60

40

20

0 (0%)

0 (0%)

2 (2.7%)

3 (4%)

0

1

2

3

4

5

70 (93.3%)

1. In your opinion, how important is a well-defined, transparent tax appeal process and timely tax dispute resolution for determining tax law clarity, certainty and consistent understanding of the Upstream oil and gas taxation.



75 responses

Copy

80

60

62 (82.7%)

40

20

0 (0%)

0

0 (0%)

2 (2.7%)

1 2 3 4 5

11 (14.7%)

1. In your experience, how clear and consistent are the recent judicial decisions affecting upstream petroleum taxation and how important are these in achieving upstream oil and gas tax legislation certainty.

74 responses

Copy

30

20

25 (33.8%)

24 (32.4%)

10

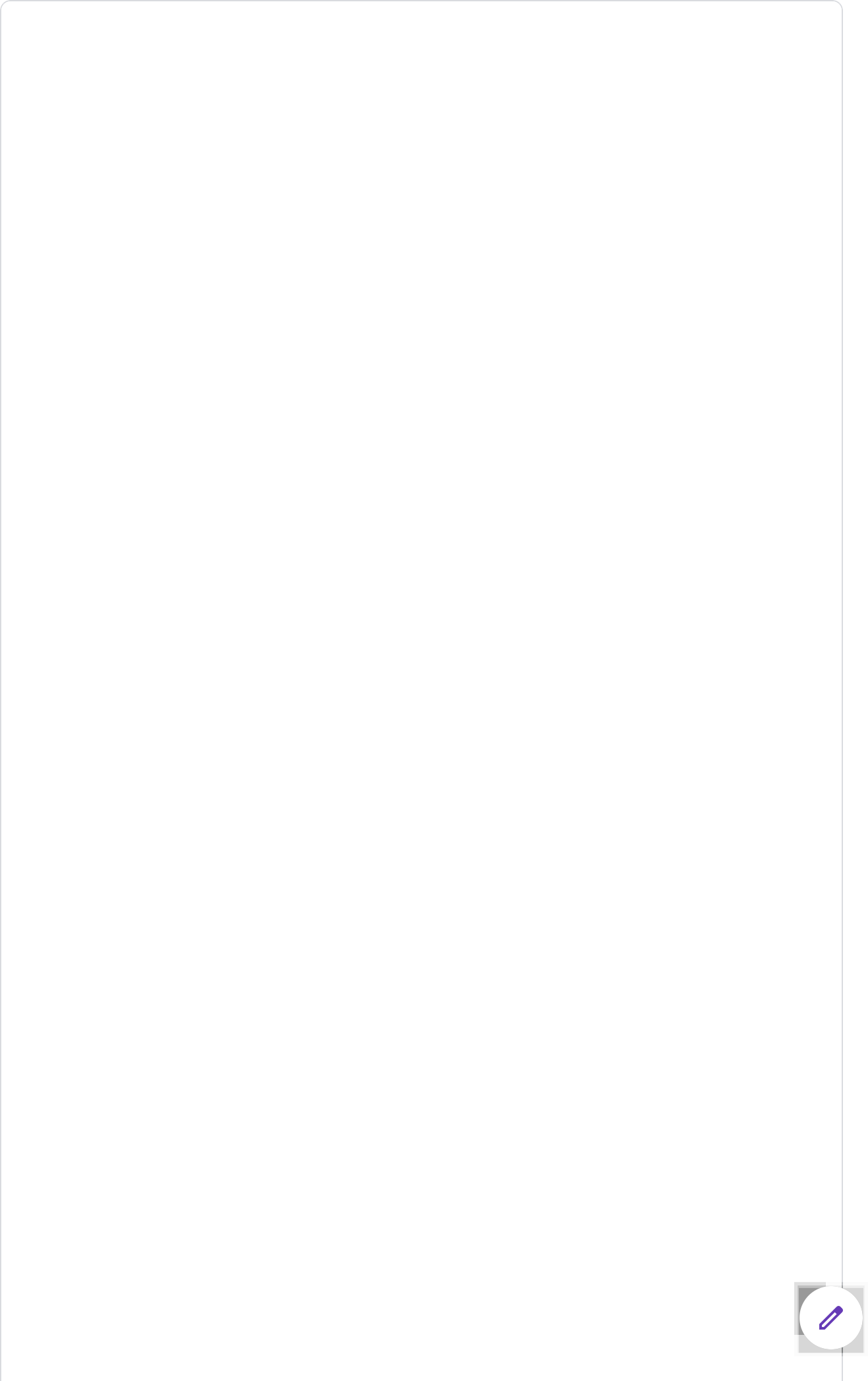
18 (24.3%)

0 (0%)

7 (9.5%)

0

1 2 3 4 5



Please add any other comments below\_4:

14 responses

Most of the decisions so far lacked well defined legal basis and creates more uncertainty Our Tax Appeal Tribunal(s) is generally speaking, more efficient then the general courts in

terms of both speed and clarity of decisions. However, in a few cases, there has been room for lingering doubt on the position of the TAT on some matters. This is all however subject to the appellate jurisdiction of the FHC.

Some of the recent judicial decisions affecting the upstream petroleum companies have not been clear and consistent as the decisions appear to be borne from a place of bias.

Recent judicial decisions affecting upstream petroleum taxation have been quite inconsistent. This is reflective of falling standards in the judiciary - thus making the work of advisers to be ever more difficult.

Regrettably, I am not able to answer Question nr 17, as I do not know which judicial decisions are being referenced.

Owing to the technicality of the oil and gas industry, it is imperative that there are a high level of clarity in the fiscal terms in order to avoid frequent disputes that are prevalent in the industry.

Some Rules of court and practice directions recently issued further threatens the effective administration of tax legislation as the rules seek to derogate from the constitutional rights of the tax payers to appeal.

The judicial decisions have been mixed in their impact

knowledge of the system cannot be over -emphasised. this is an area that we require a lot of work in Nigeria. in some instances there is a struggle to understand tax on the one hand then layered with the industry knowledge - judicial officers need quite some training

The role of the judiciary cannot be understated. Interpretation of numerous ambigous provisions often turn on the judicial interpretation and judicial officers are therefore key to providing the much needed clarity to the tax space

For the Petroleum sector, we continue to see more quality adjudication at the TAT, while in some instances at the FHC less quality kicks in due to dearth of tax expertise in most of the FHC

none

some of the judicial officers exhibit vague understand of the peculiarities of the upstream fiscal environment

Fiscal and Tax Policy and Tax Law reform.

conflict in rulings on the same subject but different courts of the same level

1. In your experience, how significant or important is regular structured fiscal and tax policy review, tax law reform and tax law amendment, in achieving clarity and certainty in Upstream petroleum taxation.



76 responses

Copy

60

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | | | | | | |
|  | | | | | 49 (64.5%) |  |
|  | | | | |  |
|  | | | | |  |
|  | | | 22 (28.9%) |  |
|  | | |  |  |
| 0 (0%) 0 (0%) | | |  |  |
|  |  | 5 (6.6%) |

40

20

0

1 2 3 4 5

1. In your opinion, to what extent has the delay in fiscal and tax policy and tax law reform contributed to creating uncertainty in investment decision making in the Nigerian oil and gas tax sector?

76 responses

Copy

60

40

47 (61.8%)

20

0 (0%) 1 (1.3%)

17 (22.4%)

11 (14.5%)

0

1 2 3 4 5



20. In your opinion, how important are the combination of fiscal regimes and the different tax systems and rates under the PIA, for offshore and onshore petroleum operations in achieving clarity, certainty and effective compliance?

75 responses

Copy

40

30

20

10

0 (0%)

0

1

4 (5.3%)

2

3

4

5

10 (13.3%)

22 (29.3%)

39 (52%)

Please add any other important comments below\_5:

10 responses

The uncertainty in Fiscals within the industry over time has led to a significant loss of investment for the Country.

1. I think that tax policy and tax law reform should not necessarily be undertaken regularly, as this could have a destabilising impact. Tax policy and Tax laws should be articulated with a long-term view, as this enables corporate and business entities to establish long-term business plans that take the relevant tax policies/tax laws, into due consideration. Tax policy/tax law review should be undertaken, judiciously, either to pre-empt, or address hitherto, unanticipated situations and developments. 2. Regrettably, I am not able to comment on the PIA differentiations for On/Offshore petroleum operations, as I have not yet studied these, in- depth.

No comment

Combination of fiscal regimes and different tax rates will bring about ambiguity especially at the first few ;years of PAI implementation

I sincerely believe that the inclusion of the dual fiscal regime in the Petroleum Industry Act is an elixir for the industry. I found it inequitable to subject small producers which are struggling to surmount many challenges to be subjected to the fiscal regime as the big and long-established producers.

Clarity in the implementation of the PIA is important to understand its effectiveness

What is important in any nation is whether or not the “nation has a tax system that looks like someone designed it on purpose”. The law as an instrument of social and economic change must not at any time lag behind socio-economic development. t

On 19, tax considerations are only part of the considerations that affect investment decision making; and in Nigeria other bottlenecks and challenges in the operating environment, including insecurity and corruption, are also key issues.

Structured changes is important - it would be nice for Nigeria to be able to plan tax changes years ahead of implementation. this gives a lot of room to understand changes plan for implication and getting the transition right.

none

Please tick the box that most closely describes your work.

74 responses

Copy

Financial Officer Tax Administrator or Govt… Tax department of a busi… Professional Adviser

Legal officer Judicial Officer

1 (1.4%)

4 (5.4%)

0 (0%)

14 (18.9%)

12 (16.2%)

41 (55.4%)

Other ( Please specify) 9 (12.2%)

0 20 40 60

Please specify\_1

22 responses

Copy

2

.1%)

2 (9

2 (9.

1%)

1 1 (4.5%)

(4.51%(4) .51%(4) .51%(4) .51%(4) .51%(4) .51%(4) .51%(4) .51%(4) .51%(4) .51%(4) .51%(4) .51%(4) .51%(44) .5%)

1

1 (4.51%(4) .51%(4) .5%

0

Academic

Head of the Tax…

Partner Tax and…

Researcher

Tax Manager

Engaged in the…

Law teacher

Professor of Tax…

Tax Consultant

Transaction…



Please specify\_2

5 responses

Oil and Gas Tax Consultant Tax Law

Tax Adviser

Chairman, Tax Appeal Tribunal, South East Zone. Academic

ZOOM Call

This content is neither created nor endorsed by Google. R [eport Abuse](https://docs.google.com/forms/d/1HczRnnyvp2oCRtce6UewNpVjKPFp2_ExkOTXx-YMeto/reportabuse) - [Terms of Service](https://policies.google.com/terms) - [P rivacy Policy](https://policies.google.com/privacy)



If you are willing to participate in a brief one to one call or zoom meeting with the researcher, kindly indicate in the box below, and provide your contact details:

66 responses

Copy

Yes

41 (62.1%)

No

25 (37.9%)

0

20

40

60

[Forms](https://www.google.com/forms/about/?utm_source=product&utm_medium=forms_logo&utm_campaign=forms)

**APPENDIX** **III – National Tax Policy - 2012 & Revised National Tax Policy -2016**

[(PDF) National Tax Policy FEDERAL MINISTRY OF FINANCE APRIL 2012 | Ugwumsinachi Benjamin - Academia.edu](https://www.academia.edu/27794073/National_Tax_Policy_FEDERAL_MINISTRY_OF_FINANCE_APRIL_2012)

[Nigeria. Revised National Tax Policy | PDF (slideshare.net)](https://www.slideshare.net/slideshow/nigeria-revised-national-tax-policy/66707287" \l "7)

**APPENDIX** I**V - National Oil Policy (NOP) / National Gas Policy 2016**

<https://acrobat.adobe.com/id/urn:aaid:sc:eu:6e6c48d7-93f7-455c-8e21-88920f0ebc2c>

[Microsoft Word - National\_Gas\_Policy-FEC-Jun\_2017 .docx (petroleumindustrybill.com)](http://www.petroleumindustrybill.com/wp-content/uploads/2017/06/National-Gas-Policy-Approved-By-FEC-in-June-2017.pdf)

**APPENDIX** **V – Petroleum Industry Bill (PIB) – 2008 to 2020**

[PETROLEUM INDUSTRY BILL 2008.pdf (ngfrepository.org.ng)](https://ngfrepository.org.ng:8443/jspui/bitstream/123456789/954/1/PETROLEUM%20INDUSTRY%20BILL%202008.pdf)

[Petroleum-Industry-Bill-2020.pdf (petroleumindustrybill.com)](http://www.petroleumindustrybill.com/wp-content/uploads/2020/09/Petroleum-Industry-Bill-2020.pdf)

**APPENDIX** **VI - National-Petroleum-Policy-Approved-By-FEC-In-July-2017.Pdf**

[National-Petroleum-Policy-Approved-By-FEC-In-July-2017.Pdf - DocsLib](https://docslib.org/doc/5740705/national-petroleum-policy-approved-by-fec-in-july-2017-pdf)

1. Sir Josiah Stamp, The Fundamental Principles of Taxation in the Light of Modern Developments:

   The Newmarch Lectures for 1919 (1929) 198 (referring to M’Culloch’s adaptation of Pope), quoted in P J Lanigan, ‘Technical Problems Relating to the Objectives and Consequences of Taxation’ in Taxation Institute of Australia (ed), Taxation Now and in the Future: Papers and Commentaries Presented at the First National Convention of the Taxation Institute of Australia (1969) 27, 39. [↑](#footnote-ref-0)
2. Cambridge Dictionary: https://dictionary.cambridge.org. [↑](#footnote-ref-1)
3. The upstream sector involves the exploration for and extraction of petroleum crude oil and

   natural gas. The upstream oil sector is also known as the exploration and production (E&P) sector. The upstream sector includes the searching for potential underground or underwater oil and gas fields, drilling of exploratory wells, and subsequently operating the wells that recover and bring the petroleum crude oil and/or raw natural gas to the surface. [↑](#footnote-ref-2)
4. Knight, Frank; ‘Risk Uncertainty and Profit’ (1921) - In economics, [Frank Knight](https://en.wikipedia.org/wiki/Frank_Knight) distinguished uncertainty

   from risk with uncertainty being lack of knowledge which is immeasurable and impossible to calculate; this is now referred to as ‘[Knightian uncertainty](https://en.wikipedia.org/wiki/Knightian_uncertainty)’. It states that “Uncertainty must be taken in a sense radically distinct from the familiar notion of risk, from which it has never been properly separated...’. The essential fact is that 'risk' means in some cases a quantity susceptible of measurement, while at other times it is something distinctly not of this character; and there are far-reaching and crucial differences in the bearings of the phenomena depending on which of the two is really present and operating.... It will appear that a measurable uncertainty, or 'risk' proper, as we shall use the term, is so far different from an unmeasurable one that it is not in effect an uncertainty at all”. — [Frank Knight](https://en.wikipedia.org/wiki/Frank_Knight) (1885–1972), *Risk, Uncertainty, and Profit* (1921), [University of Chicago](https://en.wikipedia.org/wiki/University_of_Chicago). [↑](#footnote-ref-3)
5. Chambers Concise Dictionary & Thesaurus, Edited by Mary O’Neill (new edn.). Uncertainty (noun) is

   described as an uncertain state, something that is uncertain. The following synonyms are used to explain the term: doubt, skepticism, irresolution, dilemma, hesitation, misgiving, confusion, bewilderment, perplexity, unreliability, unpredictability, insecurity. Uncertain (adj.) is described as not sure, not definitely known or decided, not to be depended upon, likely to change and lacking confidence; hesitant. Certainty (noun), as the opposite is something that cannot be doubted or is bound to happen. Freedom from doubt, the state of being sure, and the state of being sure to happen: e.g. *certainty of death.* [↑](#footnote-ref-4)
6. John Kay & Mervyn King, ‘Radical Uncertainty-Decision Making Beyond the Numbers’.

   (March 2020) [↑](#footnote-ref-5)
7. Schatzl L.H., ‘Petroleum in Nigeria (First Edition, Oxford University Press, 1969) 152; Nwoba Martin and E.O. Abah ‘Impact of Crude Oil Revenue (COR) On Economic Growth in Nigeria (1960-2010)’ (2017) 22(7) IOSR Journal of Humanities and Social Science 85-99; Brownson Moses Udodok ‘The role of the petroleum industry in the development of the Nigerian economy, (1975) 5(1) Atlanta University Center 1-79. [↑](#footnote-ref-6)
8. Bayelsa State is one of the 36 States in the Federation and was carved out of the present Rivers State of

   Nigeria in1996. Bayelsa State has one of the largest crude oil and natural gas deposits in Nigeria. [↑](#footnote-ref-7)
9. Oil prospecting license (OPL), oil exploration and oil mining licenses (OEL/OML’s). [↑](#footnote-ref-8)
10. Nigeria’s oil and condensate reserves as at January 2023 stands at 31,060 billion barrels of oil and 5,906

    billion barrels for condensate, making a total of 36,966 billion barrels of oil and condensate while associated gas reserves is 102,32 trillion cubic feet, non-associated gas is 106.51 trillion. https://www.thisdaylive.com [↑](#footnote-ref-9)
11. L.N. Chete, J. O. Adeoti, F. M. Adeyinka, and O. Ogundele ‘Industrial development and growth in

    Nigeria: Lessons and challenges’ (Brookings Institution, African Development Bank Group, Learning to Compete, Working Paper 8, United States, 2016) 1-40; Nweze Paul Nweze and Greg Ekpung Edame ‘An Empirical Investigation of Oil Revenue and Economic Growth in Nigeria’ (2016) 12(25) *European Scientific Journal* 271-294, ”op cit”; Temitope Michael Asagunla and Moses Oyeyemi Agbede ‘Oil Revenue and Output Growth in Nigeria’ (2018) 4(6) *IIARD International Journal of Economics and Business Management* 65-74. [↑](#footnote-ref-10)
12. . Victor Nwaoba Itumo, ‘Nigeria’s Mono-Cultural Economy: Impact Assessment and Prospects’ (2016)

    8(2) *European Journal of Interdisciplinary Studies* 20-35; Nweze Paul Nweze and Greg Ekpung Edame (2016) 12(25) *European Scientific Journal* September 271-293. [↑](#footnote-ref-11)
13. . C.A. Okezie and Baharuddin Amir ‘Economic crossroads: The experiences of Nigeria and lessons from Malaysia, (2011) 3(8) *Journal of Development and Agricultural Economics* 368-378. [↑](#footnote-ref-12)
14. Chukwueyem Rapu, Adeniyi Adenuga, Williams Kanya, Magnus Abeng, Peter Golit, Margaret Hilili, Ibrahim Uba, Emeka Ochu, ‘Analysis of Energy Market Conditions in Nigeria’(Central Bank of Nigeria, Central Business District, Abuja, Nigeria) 1-80. [↑](#footnote-ref-13)
15. Osayaba Giwa-Osagie & Emwanta Ehigiato, Financing Options in the Oil and Gas Sector in Nigeria, (2015) Vol 33(3) *Journal of Energy & Natural Resources Law* 218-240 (“Giwa-Osagie & Ehigiato”); See, also, Onyedimma Kachukwu, ‘Five Reasons Oil Price Drop Will be Devastating for Nigeria’ (Ventures Africa, 20 October 2014) <<https://venturesafrica.com/5-reasons-oil-price-drop-will-be-devastating-for-nigeria/>> accessed 15 April 2024. [↑](#footnote-ref-14)
16. Adeyeri,Olusegun, Adejuwon, Kehinde Davide, The Implication of British Colonial Economic Policies

    on Nigeria; International Journal of Advanced Research in Management and Social Sciences, Vol. 1 | No. 2 | August 2012. Frances Jumoke Oloidi, Webology ‘The Colonial Administrators And Income Policies In Nigeria Before Independence (1900 – 1960) (ISSN: 1735-188X) Volume 18, Number 5, 2021 [↑](#footnote-ref-15)
17. Yinka Omoregie, ‘Fiscal Regimes: Review and Reform,’ The Oil and Gas Summit of the Nigerian

    Economic Summit Group (NESG), Abuja, 12th – 14th November,2003. [Fiscal Regimes.doc](https://nigerianlawguru.com/wp-content/uploads/2024/06/FISCAL-REGIMES-1.pdf) – accessed Dec.2024. [↑](#footnote-ref-16)
18. Adamu Jibir and Chandana Aluthge, Fiscal Policy Operation in Nigeria: Trends, Magnitude and

    Challenges, Publisher: KSP Books, Turkey ISBN: 978-605-7602-84-8, June 2019, [↑](#footnote-ref-17)
19. Petroleum Act (PA)1968 & Petroleum Profits Tax Act (PPTA) 1959, Laws of the Federation 2004. Also,

    the Company Income Tax Act, Local Content Act, NDDC Act, Oil and Gas Tax Free Zone Act, MOU, etc. [↑](#footnote-ref-18)
20. Adeyemi, Babatunde Ajani, ‘Petroleum Profits Tax Act in Nigeria: The Practice’ (2015). Available

    at SSRN: <https://ssrn.com/abstract=2703620> or [http://dx.doi.org/10.2139/ssrn.2703620.](http://dx.doi.org/10.2139/ssrn.2703620.%20)  [↑](#footnote-ref-19)
21. Kyari Adam Konto: PhD Thesis**: ‘**A Theoretical and Empirical Investigation into the Design and

    Implementation of an Appropriate Tax Regime: An Evaluation of Nigeria’s Petroleum Taxation Arrangements’(DPhil Thesis, Robert Gordon University 2013). See also, Asada D, and Olong M, Appraising Taxation and the Nigerian Oil Industry’ in J.A. Agbonika (eds), Topical Issues on Nigerian Tax Laws and Related Areas (Ibadan: Abada Press limited, 2015) pp 184-186. [↑](#footnote-ref-20)
22. Adam Smith thought that taxes should be clear, so that everyone paying them could understand when, how,

    and what they should be paying. The tax code is meant to do that, by outlining the taxes you have to pay and clearly stating that your [income tax](https://www.shmoop.com/finance/taxes/types-of-income-taxes.html) return is due on a specified date. The tax code should let you see exactly how much you will owe and exactly how much you should pay as your tax liability. Adam Smith in his seminal book “The Wealth of Nations “articulated four key principles for taxation as follows; Equality, Certainty, Convenience and Efficiency. [↑](#footnote-ref-21)
23. ‘Update on Tax Certainty’: IMF/OECD Report for the G20 Finance Ministers and Central

    Bank Governors, July 2018. [↑](#footnote-ref-22)
24. UK Treasury Report 2023, A simple tax system does not distort economic decisions and treat everyone

    equally. But just what do we mean by simplicity in tax, and how can it be achieved? Is it really the single most important driver, or should it be balanced against concepts such as stability or certainty? Some commentators are however of the view that simplicity in the taxation regime may be difficult to achieve in complex industries, such as the oil and gas industry. [↑](#footnote-ref-23)
25. United Nations Handbook on Selected Issues for Taxation of the Extractive Industries by

    Developing Countries, <https://shop.un.org/books/un-handbk-select-issues-taxation-85642> (March 2019). [↑](#footnote-ref-24)
26. OECD Report on Addressing the Tax Challenges of the Digital Economy, (2014) [↑](#footnote-ref-25)
27. Stanford Encyclopedia of Philosophy ‘Law and Language’ (First published, 5 December 2002 and revised 15 April 2016, Stanford University, United States) (online) <<https://plato.stanford.edu/entries/law-language/>> accessed 15 April 2024. [↑](#footnote-ref-26)
28. Lon L. Fuller, The Morality of Law (New Haven, Yale University Press, revised edn 1973), 262.

    Fuller’s definition of legal system is based on eight ‘principles of internal morality’ and reflects some key requirements of the principle of certainty of law, as accepted in civil and common law jurisdictions. [↑](#footnote-ref-27)
29. Anthony Burgess, A Mouthful of Air (Vintage 1993) 15. [↑](#footnote-ref-28)
30. Jack Stark, The Art of Statute, Chapter 1 – Background on Language, p.xi. [↑](#footnote-ref-29)
31. Ray Jackendoff, Patterns in the Mind Language and Human Nature*,* (Basic Books 1994) Chapter 4, p.39-52 [↑](#footnote-ref-30)
32. Peter Fredrick Strawson, ‘On Referring’ (Oxford University Press, United Kingdom 1950) 235. [↑](#footnote-ref-31)
33. James Boyd White; *The Legal Imagination* (Abridged edn, University of Chicago Press 1985, 1 [↑](#footnote-ref-32)
34. Vincent Cyril Crabbe, ‘Drafting in Developing Countries: The Problem of Importing Expertise’ (1992) 4 *African J. Int'l Comparative Law* 630 - 648.  [↑](#footnote-ref-33)
35. Jack Stark, ‘Should the Main Goal of Statutory Drafting Be Accuracy or Clarity?’ (1994) 15(3) *Statute Law Review* 207-213. [↑](#footnote-ref-34)
36. Ibid, p.207 [↑](#footnote-ref-35)
37. Jeffrey Owens, ‘The Role of Tax Certainty in Promoting Sustainable and Inclusive Growth’.

    Paper presented at the Multi-disciplinary Academic Conference, UNCTAD, Geneva, 26 October 2018. The paper dealt with the following issues: (i) Tax certainty**-** The capacity to make an accurate assessmentof the tax and compliance **co**sts associated with an investment or a continuation of an investment in a country over the life cycle of the investment/company; (ii) Compliance by taxpayers andvoluntary behavior by companies and individuals,in a way that both respects the letter and the spirit of the lawand which is in accordance with the intention of the legislator; (iii) Aggressive tax planning - An intentional use of the tax law or a combination of tax laws and /or tax treaties in a way that leads to taxation not in line with the spirit and purpose of the relevant tax laws. [↑](#footnote-ref-36)
38. Parts I and II of the 2nd Schedule to the 1999 Constitution consists of two (2) Lists which contain the items

    on which each tier of government may legislate. [↑](#footnote-ref-37)
39. See also G20 Leaders’ Communique, Hangzhou Summit, China, 4 -5 September 2016.

    “We emphasize the effectiveness of tax policy tools in supply-side structural reform for

    promoting … the benefits of tax certainty to promote investment and trade and ask the OECD and IMF to continue working on … tax certainty.” [↑](#footnote-ref-38)
40. Petroleum Industry Bill (PIB) and the National Petroleum Fiscal Policy document (NPFP), 2016, examined

    in chapter 5 of this Thesis. [↑](#footnote-ref-39)
41. Sections 10, 11, PPTA & Sections 5, 13-16 DIOBPSCA. See also, Adeyemi Babatunde Ajani, ‘Petroleum

    Profits Tax Act in Nigeria: The Practice’ (August 10, 2015). Available at SSRN: <https://ssrn.com/abstract=2703620> or [http://dx.doi.org/10.2139/ssrn.2703620](https://dx.doi.org/10.2139/ssrn.2703620) . [↑](#footnote-ref-40)
42. Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act 1989. [↑](#footnote-ref-41)
43. Section 16 of the DOIBPSCA/PSC Act states: (1) The provisions of this Act shall be subject to review

    to ensure that if the price of crude oil at any time exceeds $20 per barrel, real terms, the share of the government of the Federation in the additional revenue shall be adjusted under the production sharing contracts to such extent that the production sharing contracts shall be economically beneficial to the government of the Federation.

    (2) Notwithstanding the provisions of Subsection (1) of this Section, the provisions of this Act shall be liable to review after a period of fifteen years from the date of commencement and every five years thereafter.” [↑](#footnote-ref-42)
44. *The Attorney Generals of Rivers, Bayelsa and Akwa Ibom States v The Attorney-General of*

    *The Federation.* - Suit No. SC/964/2016 & The Deep Offshore and Inland Basin PSC (Amendment)

    Act, 2019. [↑](#footnote-ref-43)
45. Sections 11 PPTA & s 39 CITA, legislating the special fiscal incentives granted for the accelerated

    Associated Gas (AG) and Non- Associated Gas (NAG). [↑](#footnote-ref-44)
46. *Nigeria Agip company Limited v FIRS*, [2014] 16 TLRN 25, [↑](#footnote-ref-45)
47. This was a common occurrence in the past in the Nigerian tax system, although its incidence has

    presently substantially been eliminated. There are still issues of lack of clarity in the effective dates of new legislation, and how these affects upstream petroleum taxation. [↑](#footnote-ref-46)
48. The latter concepts relating to government’s reneging on previous taxpayer-specific promises (such as tax

    incentives granted to attract specific taxpayer investments). And it is equally critical to distinguish the impact of retroactive changes on incentives to invest, from general concepts of unfairness, and again, from adverse signals regarding the trustworthiness of specific governments going forward. [↑](#footnote-ref-47)
49. Withholding Tax, Value Added Taxes etc. are some cases in point to be explored further in the

    chapter 4 of the thesis [↑](#footnote-ref-48)
50. A change may, of course be fully anticipated. Moreover, if changes rationalize and simplify the

    tax system, overall uncertainty may be reduced in the longer term, even if short-term uncertainty could temporarily affect business decisions. [↑](#footnote-ref-49)
51. Section 251(1) of the Nigerian Constitution establishing the Federal High Court states:

    “(1) Notwithstanding anything to the contained in this Constitution and in addition to such other

    jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters -

    (a) relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;

    (b) connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation;” [↑](#footnote-ref-50)
52. [2013] 9 TLRN 28. [↑](#footnote-ref-51)
53. *TSKJ II Construces v.FIRS,* Vol 9 All NTC,101 (FHC/Abj /TA/11/2012). [↑](#footnote-ref-52)
54. See decision in *Nigerian National Petroleum Corporation v. Tax Appeal Tribunal,* where the court

    upheld the creation and jurisdiction of the TAT, and later affirmed by the Court of Appeal (CA) in 2017 in *CNOOC & Sapetro v NNPC,* when it held that the jurisdiction of the TAT, which is an administrative appellate body over tax disputes as set out in the Federal Inland Revenue Service (Establishment) Act, 2007, is not in conflict with the exclusive jurisdiction of the Federal High ( CA/L/1144/2015 & CA/L/1145/2015) [↑](#footnote-ref-53)
55. Niger-Delta Development Commission (Establishment etc.) Act No 6, 2000, Laws of the

    Federation of Nigeria (NDDC Act). Section 14(2) (b) levies 3 percent of the total annual budget of any oil producing company operating on shore and offshore, in the Niger-Delta Area; including gas processing companies; but what constitutes annual budget is not defined. The question has been whether this refers to capital or operating budget.

    [↑](#footnote-ref-54)
56. OECD/IMF ‘Report on Tax Certainty – 2018 Update’ (Organisation for Economic Co-operation and Development (OECD), 22 July 2018) (online) <<https://www.oecd.org/tax/tax-certainty-update-oecd-imf-report-g20-finance-ministers-july-2018.pdf>> accessed 20 March 2019; see also IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors ‘Update on Tax Certainty’ (Organisation for Economic Co-operation and Development, International Monetary Fund, 2018) 5-47; see further IMF/OECD Report for the G20 Finance Ministers (2017) <<http://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf>> accessed 5 September 2018; EY ‘OECD Secretary General sends tax update to G20 Finance Ministers, including IMF/OECD report on Tax Certainty’ (EY Global Tax Alert, 21 March 2017) 1-4; EY ‘ OECD Secretary-General sends G20 finance ministers an annual progress report of the Inclusive Framework on BEPS and update on IMF/OECD Report on Tax certainty (EY Global Tax Alert, Global Edition, Washington DC, New York, Amsterdam, 25 July 2018) 1 [↑](#footnote-ref-55)
57. Jonathan Schwarz ‘Tax Certainty: Cure the disease not the symptom’ (Kluwer International Tax Blog, The Netherlands, 28 August 2018) <<http://kluwertaxblog.com/2018/08/28/tax-certainty-cure-disease-not-symptom/?print=pdf>> accessed 15 April 2024 [↑](#footnote-ref-56)
58. Yehonnatan Givati ‘Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings’ 2009), 29 *Virginia Tax Review* 1-34; (Harvard John M. Olin Center for Law, Economics, and Business Fellows’ Discussion Paper Series, Discussion Paper No. 30, Harvard Law School, Cambridge, USA) 1-36; see also Susan Long and Judyth Swingen ‘Taxpayer Compliance: Setting New Agendas for Research’ (1991) 25 *Law and Society* 637, 646-647 [↑](#footnote-ref-57)
59. . IMF/OECD Report for the G20 Finance Ministers (2017) < <https://www.imf.org/external/np/g20/pdf/2017/031817.pdf>> accessed 15 April 2024; [↑](#footnote-ref-58)
60. . Sung-Soo Yoon, Seung-Weon Yoo and Jinbae Kim ‘Ambiguity, Audit Errors, and Tax Compliance’ (2011) 18 *Asia-Pacific Journal of Accounting & Economics* 11–26. [↑](#footnote-ref-59)
61. . Gareth Myles ‘Taxation and Economic Growth’ (2000) 21(1) *Fiscal Studies* 141-168; Seth Giertz and Jacob Feldman ‘The Economic Costs of Tax Policy Uncertainty: Implications for Fundamental Tax Reform’ (Mercatus Center at George Mason University, 27 November 2012) 1-32. [↑](#footnote-ref-60)
62. . Leigh Osofsky ‘The Case Against Strategic Tax Law Uncertainty’ (2011) 64 *New York University Tax Law Review* 489-538. [↑](#footnote-ref-61)
63. Rahim Moloo and Alex Khachaturian ‘The Compliance with the Law Requirement in International Investment Law’ (2011) 34(6) *Fordham International Law Journal* 1473-1501; Thomas Schultz and Cedric Dupont ‘Investment Arbitration: Promoting the Rule of Law or Over-empowering Investors? A Quantitative Empirical Study’ (2015) 25(4) *European Journal of International Law* 1147-1168; Jason Yackee ‘Political Risk and International Investment Law’ (2014) *24 Duke Journal of Comparative & International Law* 477-500; Christopher Ryan ‘Discerning the Compliance Calculus: Why States comply with International Investment Law’ (2009) 38 *GA. Journal of International and Comparative Law* 63-95; Specific provisions have sometimes been introduced in legislation to address some forms of uncertainties, e.g. Nigeria LNG (Fiscal Incentives, Guarantees and Assurances Act) No. 39 of 1990, Second Schedule, Paragraph 6. [↑](#footnote-ref-62)
64. See Thesis, Chapter 5 on fiscal policy design and development in Nigeria, and chapters 7 &8 on fiscal

    policy and budgetary procedures in the UK and Canada, respectively. [↑](#footnote-ref-63)
65. Tax Law Rewrite Project, see also “The Complexity of Tax Simplification: The UK Experience”.

    There have been many proposals for tax simplification in the UK, for example, the independent Tax Reform Commission concluded that the level of complexity in the system was becoming unsustainable, and reform was required (Tax Reform Commission 2006, p. 128). However, it has long been appreciated that tax simplification is a complex issue – see for example Cooper (1993). More recently, the Mirrlees Review (2011, p. 42) pointed out that, of course, a simple tax system is better than a more complex one if it achieves the same objectives. Among other things, a simple system is likely to be relatively transparent and cost less to operate. Nevertheless, the Review also pointed out that the world is sufficiently complex for it to be unlikely that any tax system could be truly simple. [↑](#footnote-ref-64)
66. Natural Resource Governance Institute (NRGI) [www.resourcegovernance.org](http://www.resourcegovernance.org) - A fiscal regime is

    the set of instruments or tools (taxes, royalties, dividends, etc.) that determine how the revenues from

    oil and mining projects are shared between the state and companies. The details of what fiscal tools are used and how they are applied to a particular mining or oil project are part of a country’s legal framework, which includes the laws, regulations, and contracts. There are many considerations a country makes in determining which fiscal tools to use and how to use them. While the government may have preferences, it must also respond to the needs of the companies if the State wants to attract investment. [↑](#footnote-ref-65)
67. Jeffrey Davis, Rolando Ossowski & Annalisa Fedelino, ‘Fiscal Challenges in Oil-Producing Countries: An Overview’ in JM Davis, R Ossowski & A Fedelino (eds) *Fiscal Policy Formulation and Implementation in Oil Producing Countries* (Washington, D.C.: International Monetary Fund, 2003) at 2 [Davis]; Charlotte J Lundgren, Alun H Thomas & Robert C York, *Boom, Bust, or Prosperity? Managing Sub-Saharan Africa’s Natural Resource Wealth* (Washington, D.C.: International Monetary Fund, 2013) 52 [Lundgren]. [↑](#footnote-ref-66)
68. Kyari Adam Konto: PhD Thesis**: ‘**A Theoretical and Empirical Investigation into the Design and Implementation of an Appropriate Tax Regime: An Evaluation of Nigeria’s Petroleum Taxation Arrangements’(DPhil Thesis, Robert Gordon University 2013).The study examined whether the Nigerian petroleum tax system is appropriately designed and effectively implemented to achieve the benefits the country desires from its petroleum taxation arrangements. The study indicated that the Nigerian petroleum taxation system was viewed as being well-designed, insofar as it protects the interests of both the government and the international oil companies operating within Nigeria. Furthermore, the "expert" respondents were of the view that a majority of the measures put in place to ensure compliance with the petroleum taxation system have been effective. However, the study revealed differences in views amongst the various groups of "experts" to some questions which suggests that some groups may have articulated views based on partisan values. Given the role these groups play in the petroleum fiscal system in Nigeria, it is argued that these vested interests may well have negatively affected the design and operation of the petroleum fiscal system. This finding were: First, it is argued that it is very difficult to make a single petroleum tax system that serves the needs of different countries. Second, it is suggested Nigeria’s petroleum tax regime is predicated upon a desire to capture as much revenue as possible for the government. Third, the thesis concludes that the implementation processes of the Nigerian petroleum tax system are fundamentally weak and require further improvement. Fourth, it is also the conclusion of this thesis that the Nigerian petroleum tax system lacks the capacity for timely review. Finally, it is shown that the Nigerian petroleum tax system is sensitive to changes in tax regulations across oil producing countries. [↑](#footnote-ref-67)
69. *The National Petroleum Fiscal Policy – Old Wine in a New Bottle? PWC Nigeria, Lagos, Nigeria, March*

    *2017,1-3,* [↑](#footnote-ref-68)
70. Enacted in the Petroleum Industry Act (PIA) 2021. [↑](#footnote-ref-69)
71. Afolabi Elebiju, Nigeria’s Finance Act 2020 Tax Amendment, Should the Oil and Gas Industry be

    Nervous? (March 2020) [↑](#footnote-ref-70)
72. Carole Nakhle, Petroleum Taxation: Sharing the oil wealth – A study of petroleum taxation yesterday, today and tomorrow (New York: Routledge, 2008) and Joe Amoako-Tuffour and Joyce Owusu- Ayim, ‘An Evaluation of Ghana’s Petroleum Fiscal Regime’ (2010) 4 *Ghana Policy Journal* 7. [↑](#footnote-ref-71)
73. Large Taxpayers Section of the Federal Inland Revenue Service (FIRS), Nigeria National Petroleum Corporation (NNPC) the International Oil Companies (IOC’s), the Nigerian Indigenous Oil Companies (NIOC’s), academics and institutes for Petroleum studies. I rely on literature from academic research from professional Institutes and government departments, including the Federal Inland Revenue Service (FIRS); Federal Ministry of Petroleum Resources, Federal Ministry of Justice; the Nigeria National Petroleum Company (NNPC), the Central Bank of Nigeria (CBN), the Nigeria Federal Bureau of Statistics and the Department of Petroleum Resources (DPR). I also rely on data from development banks, international financial institutions, such as the International Monetary Fund (IMF), the World Bank (WB), the Organization for Economic Co-operation and Development (OECD); other regional organizations. [↑](#footnote-ref-72)
74. Since the UK Office of Tax Simplification was set up in 2010, it has been carrying out an intermittent but ongoing project looking at the reasons why tax is complex. In its first five years, the office published a number of papers on the subject. During this study, it was expedient and timely to review these papers and see what may be beneficial to this thesis. Some of the papers are as follows:

    · Length of legislation: how long is the UK’s tax code really? (First published April 2012)

    · Tax thresholds: how many are there and how are they operating? (First published February 2013)

    · Layered legislation: could legislation be written differently? (First published September 2013)

    · Definitions in tax legislation: do they simplify, or do they add to complexity? (First published October 2013 with a response document published April 2014)

    · How to avoid complexity in the tax system: some principles (first published June 2015). [↑](#footnote-ref-73)
75. G20 Leaders’ Communique, Hangzhou Summit, China, 4-5 September 2016. [↑](#footnote-ref-74)
76. Mark Fenwick, Mathias Siems, Stefan Wrbka, *Editors: The Shifting Meaning of Legal Certainty in*

    *Comparative and Transnational Law*: The principle of legal certainty is of fundamental importance for law and society: it has been vital in stabilising normative expectations and in providing a framework for social interaction, as well as defining the scope of individual freedom and political power. Even though it has not always been fully realised, legal certainty has also functioned as a normative ideal that has structured legal debates, both at the national and transnational level. [↑](#footnote-ref-75)
77. Paul Collier, The Plundered Planet: Why We Must – and How We Can – Manage Nature for Global Prosperity (London: Allen Lane 2010) 60; Ferreira (n 12) 53; Klaver (n 14) 205. [↑](#footnote-ref-76)
78. G20/OECD 2017 report (p.41-60): [↑](#footnote-ref-77)
79. PriceWaterhouse, ‘Nigeria’s New National Tax Policy: A new dawn or another false start?’ <<https://www.pwc.com/ng/en/assets/pdf/new-national-tax-policy.pdf>> accessed 20 April 2024. [↑](#footnote-ref-78)
80. Laura Wahrig and Gancedo Vallina (2011); Emmanuel Modica, Sabine Laudage and Michelle Harding (2018) ‘Domestic Revenue Mobilisation: A new database on tax levels and structures in 80 countries’ OECD Taxation Working Papers No. 36 (Paris: OECD Publishing) http://dx.doi.org/10.1787/a87feae8-en. [↑](#footnote-ref-79)
81. Vladimir Nazarov ‘Tax System: The Concept and its Legal Content’ (2016) 11(7) *EEJME – Mathematics Education* 2195-2201; Nicholas Kaldor, ‘Taxation for Economic Development,’ (1963) *Journal of Modern African Studies* 7; Timothy Besley and Tortsen Persson ‘Taxation and Development’ in Alan Auerbac, Raj Chetty, Martin Feldstein, and Emmanuel Saez. (eds.) *Handbook of Public Economics* (North Holland, June 2013) 1-496. [↑](#footnote-ref-80)
82. Hanneke Du Preez ‘A construction of the fundamental principles of taxation’ (Doctor of Philosophy in Taxation submitted to the University of Pretoria, November 2015) 1-258; Joseph Minarik ‘Taxation’ (The Library of Economics and Liberty, Economic History, Government Policy, Taxes) <<https://www.econlib.org/library/Enc/Taxation.html>> accessed 16 April 2024. [↑](#footnote-ref-81)
83. Jorge Martinez-Vazquez and Robert McNab ‘Tax Systems in Transition Economies’ (Georgia

    State University Andrew Young School of Policy Studies, International Studies Program, Working Paper 97-1, Atlanta, USA, March 1997) 1-84; Oklahoma Policy Institute ‘Characteristics of an Effective Tax System’ (Oklahoma Policy Institute, USA) <<https://okpolicy.org/resources/online-budget-guide/revenues/an-overview-of-our-tax-system/characteristics-of-an-effective-tax-system/>> accessed 15 April 2024. [↑](#footnote-ref-82)
84. The fact is that taxes are imposed under the authority of the legislature. Secondly, it is levied by a public body and is intended for public purposes; See Major J*, in Re Eurig’s Estate (1998)* 165 DLR(4th) 1, 10*,* citing Duff J in *Lawson v Interior Tree, Fruit and Vegetable Committee of Direction* [1931] SCR 357 (Can). See also *Latham CJ in Mathews v Chicory Marketing Board* (1938) 60 CLR 263, 276 (Vic). A tax (from the Latin ‘taxo’) is a mandatory financial charge, or some other type of levy imposed upon a taxpayer (an individual or other legal entity) by a governmental organization in order to fund various public expenditure - Charles E. McLure, Jrs-Taxation, Encyclopedia Britannica, 2015. The distinction between taxes and fines is often blurred and HLA Hart in ‘The Concept of Law’ commented that: ‘Taxes may be imposed not for revenue purposes but to discourage the activities taxed, though the law gives no express indications that these are to be abandoned as it does when it “makes them criminal”. Conversely the fines payable for some criminal offence may, because of the depreciation of money, become so small that they are cheerfully paid. They are then perhaps felt to be “mere taxes”, and “offences” are frequent, precisely because in these circumstances the sense is lost that the rule is like the bulk of the criminal law, meant to be taken seriously as a standard of behavior’. [↑](#footnote-ref-83)
85. GeoffreyMorse and David Williams (n 5) 4; Musonda Kabinga et al ‘*Principles of Taxation’ (Jesuit Hakimimi Centre for Social Concern in Eastern Africa, 2016) 1-12* [↑](#footnote-ref-84)
86. Geoffrey Morse and David Williams: *Principles of Tax Law (5th edn, Sweet and Maxwell 2004),4*. [↑](#footnote-ref-85)
87. Ifueko Omoigui Okauru, FIRS publication titled: ‘*A Comprehensive Tax History of Nigeria’* (1st edn, Safari Books Ltd 2012) 67. www.africanbookscollective.com/books/a-comprehensive-tax-history-of-Nigeria.Taxation and Fiscal Policy Management Board ‘The Nigerian Tax System’ (Institute of Chartered Accountants of Nigeria, Lagos, 26 June 2018) 1-9; Christian Ndukaire Onyegbule ‘The Challenges of Tax Revenue Maximization in Nigeria through Voluntary Tax Compliance: The Role of Self-Assessment’, (Doctor of Philosophy Programme at St. Clements University, Turks & Caicos Islands, British West Indies, May 2016) 1-445. [↑](#footnote-ref-86)
88. Ibid -The FIRS Publication: A Comprehensive Tax History of Nigeria; discusses the evolution of taxation in Nigeria within the framework of eight (8) broad themes: (i) the Origin and Practice of Fiscal Federalism in Nigeria, (ii) the Constitutional Context for Taxation, (iii) the three eras of taxation in Nigeria (iv) the Structure and Jurisdiction of Nigerian Tax Authorities, (v) the instruments of Tax Policy, (vi) Statutory Developments, (vii) Beyond Oil Revenue and the Case for Tax Reform, and (viii) Making the Nigerian Tax System Globally Competitive. [↑](#footnote-ref-87)
89. Mark Anthony Dike, ‘An Overview of the Nigerian Tax System: Implications for Foreign Investors.’ (President and Chairman of Council of The Chartered Institute of Taxation of Nigeria, at the Nigerians in Diaspora Organisation, UK South Investment Conference, 17-18 March 2014) 1-25; Eze Judith Chinwendu ‘Effectiveness of Taxation for Control of Money in Circulation’ (Department of Accountancy, University of Nigeria, September 2012) 1-103. [↑](#footnote-ref-88)
90. Abayomi-Alli Mayowa ‘Pre-Colonial Nigeria and the European’s Fallacy’ (2014) 2(2) *Review of History and Political Science* 17-27; see also K.O. Osakede, and S.O. Ijimakinwa, ‘Traditional institution and the modern day administration of Nigeria: Issues and prospects (2015) 2(9) *Journal of Research and Development* 32-40. [↑](#footnote-ref-89)
91. Obas, Emirs, Obongs, Attahs, and Amayanyanabo, being titles for the heads of the traditional

    institutions and rulers. [↑](#footnote-ref-90)
92. M.I. Anyakora, O.B.A. Idowu and J.U. Osagie ‘Tax Regimes in Indigenous Nigerian Societies’ (Department of Estate Management, University of Lagos, Lagos, Nigeria) pp.1-11; B.E.A. Oghojafor, G.C. Alaneme, and O.L.Kuye, ‘Indigenous management thoughts, concepts and practices: The case study of the Igbos of Nigeria (2013) 3(1) *Australian Journal of Business and Management Research* 8-15. [↑](#footnote-ref-91)
93. Loretta N. Baryeh, Coppin, Hyacinth Ezeka ‘A comparative analysis of taxation on revenue generation in West Africa economies’ (2016) 11 *Business and Economics Journal* 1-12. [↑](#footnote-ref-92)
94. A.M.O. Atolagbe ‘An evaluation of the adaptability of Nigerian indigenous building tools in modern house construction’ (2010) 32(1) *Journal of Human Ecology* 63-68, [↑](#footnote-ref-93)
95. Benon C. Basheka ‘Indigenous Africa’s governance architecture: a need for African public administration theory?’ (2015) 50(3) *Journal of Public Administration 466-484.* [↑](#footnote-ref-94)
96. Ordinance No. 3 of 1863: See A. O. Philip, ‘The Nigerian Tax System at Crossroads’ (1987), Selected Papers, Nigerian Institute of Taxation, 39. [↑](#footnote-ref-95)
97. This was re-enacted for the Northern Protectorate of Nigeria as the Native Revenue Proclamation and extended to the Southern protectorate as the Native Revenue Ordinance 1917. [↑](#footnote-ref-96)
98. Lord Lugard, ‘The Dual Mandate in British Tropical Africa (Taylor and Francis 2013). See also J F Due, ‘Income Taxation in Tropical Africa’ (1962) British Tax Review (BTR) July – August, 226. [↑](#footnote-ref-97)
99. No 14 of 1939. [↑](#footnote-ref-98)
100. Ibid. s 2. [↑](#footnote-ref-99)
101. The Direct Taxation Ordinance No. 4 of 1940. [↑](#footnote-ref-100)
102. The four (4) regions were later replaced by 12 States by a military decree no 8 of May 1967. Only the former Mid-Western Region remained as a single state following the restructuring. In 1976, seven additional States were created. In 1987 two (2) additional States were created followed by an additional nine (9) States and [Federal Capital Territory](https://en.wikipedia.org/wiki/Federal_Capital_Territory,_Nigeria), in 1991, bringing the total to thirty (30). In 1996, additional states were created bringing it to the present number of thirty-six (36) States. [↑](#footnote-ref-101)
103. Christopher Sunday Ola, Income Tax Law for Corporate and Unincorporated Bodies in Nigeria (Ibadan: Heinemann Educational Books 1981) 1-9. [↑](#footnote-ref-102)
104. the taxation of petroleum operations in Nigeria. [↑](#footnote-ref-103)
105. [1959 No. 15. 1991 No. 21. 1996 No. 30. 1996 No. 31. 1996 No. 32. 1998 No. 18. 1999 No. 30.]

     [1st January 1958] [Commencement]. [↑](#footnote-ref-104)
106. Ibid - s. 2 PPTA [↑](#footnote-ref-105)
107. See section 24 PPTA. [↑](#footnote-ref-106)
108. See section 15 PPTA. [↑](#footnote-ref-107)
109. These amendments include the Income Tax (Amendment) Act, No. 65 of 1966, the Petroleum Profits

     Tax (Amendment) Act, No. 1 of 1967; the Oil Terminal Dues Act, No. 9 of 1969; the Petroleum Profits Tax (Amendment) Act, No. 15 of 1973; No. 55 of1973; No. 14 of 1979; and Act No. 22 of 1990. The most recent is the 2020 Finance Act, which reviews and amends several tax legislations. The Finance Act deletes section 60 of the PPTA. This is the section that gives tax exemption from dividends on incomes paid out of profits made after tax deductions made under the PPTA. [↑](#footnote-ref-108)
110. The Lyttleton constitution delineated governmental powers, which were hitherto concentrated on the central government to the regional governments. The subsequent constitutions in Nigeria up to the Constitution of the Federal Republic of Nigeria 1999 (“the 1999 Constitution”), adopted a similar federal structure especially as regards the uneven distribution of governmental powers in favor of the central government. In recognition of Nigeria as a Federation, section 2(2) of the 1999 Constitution provides that “Nigeria shall be a Federation consisting of states and Federal Capital Territory”. [↑](#footnote-ref-109)
111. Constitution of the Federal Republic of Nigeria 1999. [↑](#footnote-ref-110)
112. *Njikonye v MTN Nigeria Communication*, 9 NWLR (Pt 1092) 339, [2008]. [↑](#footnote-ref-111)
113. S. 1(3) of the Nigerian Constitution. [↑](#footnote-ref-112)
114. 1999 Constitution (as Amended) s 44. [↑](#footnote-ref-113)
115. The Exclusive Legislative List itemized 68 matters that are reserved for the National Assembly to legislate upon. [↑](#footnote-ref-114)
116. Constitution of the Federal Republic of Nigeria 1999, Item 16 Exclusive Legislative List, 2nd Schedule. [↑](#footnote-ref-115)
117. Constitution of the Federal Republic of Nigeria 1999, Item 25 Exclusive Legislative List, 2nd Schedule. [↑](#footnote-ref-116)
118. Constitution of the Federal Republic of Nigeria 1999, Item 58 Exclusive Legislative List, 2nd Schedule. [↑](#footnote-ref-117)
119. Item 59 Exclusive Legislative List, 2nd Schedule, the 1999 Constitution [↑](#footnote-ref-118)
120. Constitution of the Federal Republic of Nigeria 1999, Item 7 D of Part II, Second Schedule. [↑](#footnote-ref-119)
121. Personal Income Tax Act 2004 and amendment thereto (PITA). [↑](#footnote-ref-120)
122. Stamp Duties Act 2004. [↑](#footnote-ref-121)
123. Capital Gains Tax Act 2004. [↑](#footnote-ref-122)
124. With respect to personal income tax, the authority of the Federal Government is restricted to the persons employed in the Nigeria Army, Navy, Air Force, Police other than in a civilian capacity; officers of the Nigerian Foreign Service; any other non-resident who derives income or profit from Nigeria. [↑](#footnote-ref-123)
125. PPTA as amended by DIOBPSA or the PSC Act. [↑](#footnote-ref-124)
126. Constitution of the Federal Republic of Nigeria 1999, S 4(5). [↑](#footnote-ref-125)
127. That is capital gains, incomes or profits of companies and documents or transactions by way of stamp duties. [↑](#footnote-ref-126)
128. *Attorney General of the Federation v Attorney General of Abia State* (No.2) 617. [↑](#footnote-ref-127)
129. *Oyeniran v Egbetola* [1997] 5 NWLR (Pt 504) 122 at 131. [↑](#footnote-ref-128)
130. Section 2, PITA. [↑](#footnote-ref-129)
131. *Bamidele v Commissioner for Local Government* [1994]2 NWLR PT. 328 at 585: Local government cannot be deprived of its functions, nor can it surrender these functions. [↑](#footnote-ref-130)
132. . See for instance, the Local Government Levies (Approved List for Collection) Law, signed into law on April 10, 2010, fashioned after the Federal Act, that is, The Taxes and Levies (Approved List for Collection) Act, Cap T2 LFN 2004. [↑](#footnote-ref-131)
133. Tax and Levies (Collection) list as amended. [↑](#footnote-ref-132)
134. See Thesis chapters 3, 4 & 9. [↑](#footnote-ref-133)
135. Valued Added Tax Act (VATA) is one of the seven (7) principal tax statutes amended by the

     Finance Act, 2020. The VAT rate has changed from 5% to 7.5%, effective January 2020. The scope of the amendment to VATA is unclear, thus leading the Federal Inland Revenue Service (FIRS) to issue an Information Circular, dated April 29, 2020, The Circular provides clarifications and guidance on the procedure for the implementation of the provisions of the Finance Act dealing with VAT. The Circular also amends, updates and replaces conflicting contents of all other VAT related circulars, notices and publications previously issued by the FIRS. This process highlights an aspect of the confusion sometimes introduced by the statutory amendment procedure adopted by the executive arm of government. [↑](#footnote-ref-134)
136. # [Https://Www.Banwo-Ighodalo.Com/Grey-Matter/The-Last-Days-Of-Vaids](https://www.banwo-ighodalo.com/grey-matter/the-last-days-of-vaids)

     [↑](#footnote-ref-135)
137. S 4(2), (3), (4), (5)&(7) of the 1999 Constitution. [↑](#footnote-ref-136)
138. The Taxes and Levies (Approved List for Collection) Act, LFN 2004 CAP T2. [↑](#footnote-ref-137)
139. The Exclusive List is set up under Part 1 of the Second (2nd) Schedule to the Constitution, which empowers the federal legislature to enact laws to the exclusion of states. In turn, the Concurrent List refers to the “List” of matters set out in the First Column in Part II of the Second Schedule to the Constitution with respect to which both the Federal and State legislative houses have overlapping authority and may make laws to the extent prescribed. See *Oyeniran v Egbetola* [1997] 5 NWLR (Pt 504) 122 at 131. [↑](#footnote-ref-138)
140. *AG. Ogun State v Aberuagba* [1985] 1, NSCC 187. [↑](#footnote-ref-139)
141. Cap P13 Vol 13 LFN 2004.This Act regulates the taxation of companies engaged in upstream petroleum operations. [↑](#footnote-ref-140)
142. 2011. This Act imposes tax on the assessable profit of all Nigerian companies at the rate of 2%. [↑](#footnote-ref-141)
143. Cap C1 Vol. 2 LFN 2004. This Act imposes tax on gains made from the disposition of chargeable assets at the rate of 10%. [↑](#footnote-ref-142)
144. Cap V1 Vol. 15 LFN 2004. This Act imposes tax on the supply of goods and services at the rate of 7.5%. [↑](#footnote-ref-143)
145. Cap P8 Vol. 13 LFN 2004.This Act imposes tax on all income of individuals at the graduated rates specified therein. [↑](#footnote-ref-144)
146. 2007. This Act imposes 1% tax on the companies specified therein having a minimum turnover of N100 million. [↑](#footnote-ref-145)
147. Cap S8 Vol.14 LFN 2004. This Act imposes duties on any instrument relating to any property situate in Nigeria or an act to be performed in Nigeria. [↑](#footnote-ref-146)
148. Cap 45 Vol 4 LFN 2004. This Act imposes duties on imported and locally manufactured goods. [↑](#footnote-ref-147)
149. Deep Offshore and Inland Basis PSC Amendment Act 2019. [↑](#footnote-ref-148)
150. Companies Income Tax Act (CITA) as amended. [↑](#footnote-ref-149)
151. Gas produced along with oil field exploration and development. [↑](#footnote-ref-150)
152. Section 14(2)(b) Niger-Delta Development Commission (Establishment etc) Act 2000 Act No 6. [↑](#footnote-ref-151)
153. See Value Added Tax (Amendment) Act 2007 & 2012 [↑](#footnote-ref-152)
154. Federal Inland Revenue Service (Establishment) Act 2007 [↑](#footnote-ref-153)
155. Broadly, there are three tax authorities, namely (a) Federal Inland Revenue Board, (b) State Internal Revenue Service Board, and (c) The Local Government Authorities. [↑](#footnote-ref-154)
156. FIRS Establishment Act, S 8(1) s (a) - (t) and S 8(2) which states that “The Service may from time to time, specify the form of returns, claims, statements and notices necessary for the due administration of the power conferred on it by the Act.” [↑](#footnote-ref-155)
157. Petroleum Profits Tax Act, Cap. P13 LFN, S 3 – The due administration of the Petroleum Profits Tax Act and the tax shall be under the care and management of the FIRS. The FIRS may do all such acts as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Minister of Finance. [↑](#footnote-ref-156)
158. FIRS Establishment Act, s 25-29; lists the following laws: (i) Companies Income Tax Act Cap 60 LFN, 1990 (ii) Petroleum Profits Tax Act Cap 354 LFN 1990, (iii) Personal Income Tax Act No 104, 1993, (iv) Capital Gains Tax Act Cap 42 LFN, 1990, (v) Value Added Tax Act No 102, 1993,(vi) Stamp Duty Act Cap 411 LFN, 1990, (vii) Taxes and Levies (Approved List for Collection) Act 1998 No 2, 1998.

     All Regulations, Proclamation, government notices or rules issued in terms of these regulations etc.

     The FIRS may with the approval of the Minister for Finance, by Instrument published in the Federal Gazette, appoint any Government Agency to collect revenues pursuant to the powers of the FIRS under the FIRS Establishment Act. [↑](#footnote-ref-157)
159. *Saipem Contracting Nigeria Ltd v FIRS* [2014] 15 TLRN 76, where the court held that Tax Circulars and/or Opinions cannot supersede tax statutes. [↑](#footnote-ref-158)
160. Olumide Obayemi, ‘Legal Validity of Tax Opinions/Advance Tax Rulings in Nigeria: Revisiting Saipem Contracting Nigeria Ltd vs Federal Inland Revenue Service, Suit No: FHC/L/CS/1081/09’ This-Day Lawyer (30 September 2014) 12. [↑](#footnote-ref-159)
161. Since Nigerian tax laws had their origin from English tax laws, it would not be out of place to state that the principles of English common law pronounced upon by the judges in England and interpreted by them, also form another source of Nigerian tax laws. [↑](#footnote-ref-160)
162. These are Native laws and Customs, governing the taxation of incomes, goods and properties of persons or communities within an ethnic group. Included under this heading, is the Islamic law which is the basis of Moslem laws, that are usually applicable in the Northern part of Nigeria. [↑](#footnote-ref-161)
163. *Adesina v Federal Board of Inland Revenue* [1992] 1 NTC 360 at 364; *Aboud v Regional Tax Board* [1 NTC 124], [1 NTC 141], *Reverend Shodipo v Federal Board of Inland Revenue* [1 NTC 273]; *Offshore International v FBIR* [1 NTC 384]; Alitalia Airlines Ltd v FBIR, 1 NTC 222; *Okupe v FBIR*, 1 NTC 321; and *The Queen v Urhobo Rating Authority* [1 NTC 76]. In the case of *Aderawos Timber Trading Co Ltd v. Federal Inland Revenue Service* [1969] LLR 195, 1969 All NLR 247, the court held that decisions of English courts can be invoked for the purpose of interpreting Nigerian tax statutes where the expression and terms used are similar and substantially the same as those used in English statutes. [↑](#footnote-ref-162)
164. See Appendix III. [↑](#footnote-ref-163)
165. Notwithstanding the fact that a notice of appeal has been filed, the hearing may be discontinued at the instance of either the taxpayer or the tax authority at any time before the hearing of the appeal. Upon discontinuance of the appeal, the party at whose instance the appeal is dis-continued will give appropriate notice in writing to the Tax Tribunal. [↑](#footnote-ref-164)
166. FIRS Establishment Act, S 59. [↑](#footnote-ref-165)
167. The tax payable as determined by the TAT is payable within one month of the date of notice

     of assessment, notwithstanding that an appeal may be pending on the same before the Federal High Court (FHC). Appeals before the FHC must satisfy the following conditions namely; (a) the amount must not be less than N400; (b) the appeal must be on points of law; (c) notice of the appeal must be given to the TAT within 30 days after the date of the judgement of the TAT, and lastly (d) the ground of law on which the decision of the TAT is being challenged should be stated. [↑](#footnote-ref-166)
168. *TSKJ II Construces v Federal Inland Revenue Service* (Suit No. FHC/ABJ/TA/11/12). [↑](#footnote-ref-167)
169. *Nigerian National Petroleum Corporation v Tax Appeal Tribunal & 3 Ors* (Suit No. FHC/L/CS/630/2013). [↑](#footnote-ref-168)
170. *Nigerian National Petroleum Corporation v CNOOC Exploration & Production Nigeria Limited & 2 Ors* (Suit NO: FHC/L/6A/2013). [↑](#footnote-ref-169)
171. [1949] 2 All ER 155. [↑](#footnote-ref-170)
172. [1921] 1 K 64 [↑](#footnote-ref-171)
173. [1965] 55ITR 741 (SC). [↑](#footnote-ref-172)
174. See chapter 5, OECD, Policy Framework. [↑](#footnote-ref-173)
175. The Nigerian Tax Policy (NTP) 2012.- Appendix III [↑](#footnote-ref-174)
176. National Petroleum Industry Fiscal Policy (NPIFP) document 2017. [↑](#footnote-ref-175)
177. Section 1.4, Revised National Tax Policy (RNTP) 2016, p. 2 [↑](#footnote-ref-176)
178. Section 1. 5, RNTP, p 2 [↑](#footnote-ref-177)
179. Chapters 3 & 4 of the RNTP document, pp 3-10. [↑](#footnote-ref-178)
180. Compared to India’s of 16%, Ghana’s of 15.9%, and South Africa’s of 27%.; OECD Data - Total

     tax revenue as a percentage of GDP indicates the share of a country's output that is collected by the government through taxes. It can be regarded as one measure of the degree to which the government controls the economy's resources. For OECD countries, the average tax to GDP ratio for 2018 was 34.8%. https://data.oecd.org/tax/tax-revenue.html. [↑](#footnote-ref-179)
181. Petroleum Act, No 51 of 1969 and the Petroleum Regulations 1969. [↑](#footnote-ref-180)
182. It is important to note that grants of licenses to explore for petroleum may have been given earlier, under

     the provisions of Order No.19 of 1909, of the Laws of Southern Nigeria, as the amalgamation of Northern and Southern Nigeria was effected in 1914. [↑](#footnote-ref-181)
183. S.15 (1) Cap. 120 of the 1958 Edition of the Laws of Nigeria. Mineral oil is therein defined (under Section

     2), to include bitumen, asphalt, and all other bituminous substances except for coal. The Mineral Oils Act (Cap 120) was repealed by the Petroleum Act (Cap 350). [↑](#footnote-ref-182)
184. Source: Nigerian National Petroleum Corporation (NNPC) Report 2024 [↑](#footnote-ref-183)
185. Source: Nigerian National Petroleum Corporation (NNPC) Report 2024. [↑](#footnote-ref-184)
186. Operations in the oil and gas industry consist of upstream activities, midstream activities, and downstream activities. The upstream sector of the oil and gas industry in Nigeria encompasses activities in the exploration, development, and production of crude oil and gas from the natural state. The midstream sector in the Nigerian oil and gas industry includes transportation and refining activities in the country, while downstream activities encompass operations involving storage, marketing, and sales of petrochemical products. [↑](#footnote-ref-185)
187. BP Statistical Review of World Energy, ‘Analysis: MPR Petroleum Policy Team’ (2016). [↑](#footnote-ref-186)
188. Oil in commercial quantities was first found in Oloibiri village, Bayelsa State, in the Southeastern coastal belt of Nigeria. Despite intensive exploratory and prospecting efforts in various parts of the country, particularly in the Chad Basin and Bauchi State, virtually all the oil presently found and produced in commercial quantity in Nigeria is restricted to the Niger Delta, including Ondo, Imo, and recently Lagos States. [↑](#footnote-ref-187)
189. Nigeria is regarded as a gas region, with significant oil reserves, although due to policy failure, gas

     production has remained underdeveloped with minimal revenue earnings and massive gas flaring. [↑](#footnote-ref-188)
190. Michael Asagunla and Oyeyemi Agbede ‘Oil Revenue and Output Growth in Nigeria’ (2018)

     4(6) *International Journal of Economics and Business Management* 65-74; Ojide Gabriel, Salami Kareem, Fatimah Kari, Gazi Alam and Oke Matuin,‘Impact of Gas Industry on Sustainable Economy in Nigeria, (2012) 12 *Journal of Applied Sciences* 2244-2251; Alexander Malden ‘Nigeria’s Oil and Gas Revenues: Insights From New Company Disclosures’ (Natural Resource Governance Institute, December 2017); Chukwueyem Rapu et al ‘Analysis of Energy Market Conditions in Nigeria’(Central Bank of Nigeria, Federal Capital Territory, Abuja, October 2015). [↑](#footnote-ref-189)
191. The Nigeria Liquefied Natural Gas (Fiscal Incentives Guaranties and Assurances etc) Act. Chapter N87,

     Laws of Federation of Nigeria 2004 which, amongst other things, provides for the guarantees and assurances by the Federal Government of Nigeria to the Company and its Shareholders. [↑](#footnote-ref-190)
192. . David Ricardo, *Principles of Political Economy and Taxation* (Third Edition, Batoche Books, Ontario, Canada, 1821); Marc Blaug, *Economic Theory in Retrospect* (Third Edition, Cambridge University Press, Cambridge, United Kingdom, 1978); Christian Biddard ‘The Ricardian rent theory: an overview’ (Centro Sraffa Working Papers No. 8, November 2014); Csaba Deak ‘Rent Theory and the Price of Urban Land: Spatial Organization in a capitalist economy’ (PhD Thesis submitted to the University of Cambridge, King’s College, University of Cambridge, Cambridge, United Kingdom, March 1985) : [↑](#footnote-ref-191)
193. Jason Brown, Timothy Fitzgerald and Jeremy Weber ‘Does Resource Ownership Matter? Oil and Gas Royalties and the Income Effect of Extraction’(2019) *Journal of the Association of Environmental and Resource Economists* (forthcoming); Siham Matallah and Amal Matallah ‘Oil Rents and Economic Growth in Oil-Abundant MENA Countries: Governance is the Trump Card to Escape the Resource Trap’ (Department of Economics, University of Tlemcen, Algeria, 2016); Jack Mintz and Duanjie Chen ‘Capturing Economic Rents from Resources through Royalties and Taxes’ (The University of Calgary School of Public Policy, Volume 5, Issue 30, October 2012). [↑](#footnote-ref-192)
194. Silvana Tordo ‘Fiscal Systems for Hydrocarbons’ (The International Bank for Reconstruction

     and Development / The World Bank, World Bank Working Paper No. 123, Washington DC, USA); Kirsten Bindermann ‘Production-Sharing Agreements: An Economic Analysis’ (Oxford Institute for Energy Studies, WPM 25, October 2019). [↑](#footnote-ref-193)
195. S44(3) 1999 Federal Constitution of Nigeria [↑](#footnote-ref-194)
196. (2002) 6 NWLR (Pt 764) 542 [↑](#footnote-ref-195)
197. Section 162(1) of the 1999 Constitution of the Federal Republic of Nigeria, requires the maintenance by

     the Federation of a special account (the Federation Account), into which all revenue must be paid. [↑](#footnote-ref-196)
198. S.162 (2).1999 Constitution which defines the derivation principle and the revenue allocation formula for

     the FG, the federating states and local governments of the Federation. [↑](#footnote-ref-197)
199. United Nations Convention on the Law of the Sea -1982 [↑](#footnote-ref-198)
200. (2002) 6 NWLR 542, at pp 728-729, paras H-C. [↑](#footnote-ref-199)
201. Section 162(2) of the Constitution of the Federal Republic of Nigeria, 1999. [↑](#footnote-ref-200)
202. Exclusive Economic Zone (EEZ) is defined in Art. 55 of the United Nations Conventions on the Law of the Sea, 1982 as an area beyond and adjacent to the territorial sea subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal state and the rights and freedom of other states are governed by relevant provisions of this Convention. The zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. [↑](#footnote-ref-201)
203. The Exclusive and Concurrent Legislative Lists –on which matters over which only the Federal Government

     can legislate are enumerated. This is contained in Part I of the Second Schedule of the 1999 Constitution. [↑](#footnote-ref-202)
204. There are 68 such matters, ranging from arms and ammunition, currency matters, States creation,

     Exports and Exchange control, labor matters to taxation of incomes, profits and capital gains (item 59) and trade and commerce (item 68) [↑](#footnote-ref-203)
205. (1961)2 NSCC 248 at 252 [↑](#footnote-ref-204)
206. (2001)16 NWLR (pt. 740) page 597 at 644 [↑](#footnote-ref-205)
207. (2013) 16 NWLR (Part 1380)249 SC. [↑](#footnote-ref-206)
208. The Taxes and Levies Act was amended by the Taxes & Levies (Amendment) Order 2015. Section 1(2),

     confers on the Minister of Finance (the Minister) the power to amend the schedule to the Act based on the advice of the Joint Tax Board and by order published in the Gazette. Relying on section 1(2) Taxes & Levies Act, the Minister expanded the list of taxes and levies. [↑](#footnote-ref-207)
209. Taxes and Levies (approved list for collection) Act 1998, although a *Decree* enacted by the military

     Government, it was deemed a law in force (an Act of the National Assembly) by *section 315, 1999 Constitution of the Federal Republic of Nigeria (1999 Constitution)*. [↑](#footnote-ref-208)
210. *Uyo Local Government Council v. Akwa Ibom SG & Anor,* (2020) LPELR-49691 (CA), The CA ruled that

     the Taxes and levies (approved list for collection) Act offended the supremacy clause of the 1999 Constitution. The CA unanimously held that “*nothing can operate to save any part of the Act*”, as it begins “*with a clause that undermines the supremacy of the Constitution.*” “... *The virus in the introductory clause of the Act has infested the entire Act and thereby rendering it unconstitutional”.* [↑](#footnote-ref-209)
211. [2006] 16 NWLR (Pt. 1005) 265 at 381, para-E. [↑](#footnote-ref-210)
212. Customs duties, Excise duties, Export duties and Stamp duties. These 4, in addition to Companies’

     Income Tax and Petroleum Profits Tax are administered by the FG through its revenue agencies. [↑](#footnote-ref-211)
213. 1984 S.C.20; (1985) 1 NWLR (PT. 3) 395. The principle of the division of legislative powers of

     Government enshrined in “the Constitution” of the Federal Republic of Nigeria 1979, as the basis of the dispute. It is pertinent to observe that this case was decided before the Constitution was amended and modified by Constitution (Suspension and Modification) Decree 1984 No. 1. [↑](#footnote-ref-212)
214. The Local Government Councils also contribute to the confusion as they seek to legislate on activities and

     functions provided under the 1999 Constitution. [↑](#footnote-ref-213)
215. Olumuyiwa Adeyemo, A Guide to the Taxation of Oil Companies in Nigeria’ (1st edition, Routledge 2007). [↑](#footnote-ref-214)
216. The midstream oil and gas operations or activities include the processing, storing, transporting, and marketing of oil, natural gas and natural gas liquids. [↑](#footnote-ref-215)
217. Section 2 of the PPTA defines petroleum operations for the purposes of upstream petroleum operations

     as consisting of exploration, development and production of oil and gas hydrocarbon. [↑](#footnote-ref-216)
218. *Southern Atlantic Petroleum Limited v Minister of Petroleum Resources* NOGC 6 [2007-2008] 245 CA**.** [↑](#footnote-ref-217)
219. NOGC 1 [1961 -1995] 205 CA**.** [↑](#footnote-ref-218)
220. A citizen may well be an individual, whereas the PPTA provides that only incorporated companies may be

     granted licenses to carry out petroleum operations. [↑](#footnote-ref-219)
221. The PPTA / PA licensing framework which focused on oil created a gap especially with respect to title to

     the gas discovered, contributed to the uncertainty of petroleum operations generally, which the framework under the PIA, 2021 has attempted to address.

     [↑](#footnote-ref-220)
222. Section 15(1) PA and PPTA s 2. [↑](#footnote-ref-221)
223. The licensing regime, grants the licensee the right to operate and the title to hydrocarbons discovered in line

     with the terms of the license and extant law, whilst the FG receives royalties and taxes in compensation for the use of the resource by the investor and retains the reversionary rights in the Licence. [↑](#footnote-ref-222)
224. Oladele Oladunjoye ‘Incorporated Joint Ventures in the Nigerian Petroleum Industry: Examining the Legal Implications & Regulatory Risks’ (2013) 11(2) *Oil, Gas & Energy Law Intelligence* 1-12; Sani Saidu and Hamidu Sadiq ‘Production Sharing or Joint Venturing: What Is the Optimum Petroleum Contractual Arrangement for the Exploitation of Nigeria Oil and Gas?’ (2014) 2(2) *Journal of Business and Management Sciences* 35-44 [↑](#footnote-ref-223)
225. Ernest Smith ‘From Concessions to Service Contracts’ (1992) 27 (4) *Tulsa Law Journal* 493; Taiwo Ogunleye ‘A Legal Analysis of Production Sharing Contract Arrangements in the Nigerian Petroleum Industry’ (2015) 5(8) *Journal of Energy Technologies and Policy* 1-10; Rob Pitman and Anne Chinweze ‘The Case for Publishing Petroleum Contracts in Nigeria’ (Natural Resource Governance Institute, New York, USA, March 2018) [↑](#footnote-ref-224)
226. Joseph Aigboduwa and Michael Oisamoje ‘Promoting Small and Medium Enterprises in the Nigerian Oil and Gas Industry’ (2013) 9(1) *European Scientific Journal* 244-261; Taiwo Ogunleye ‘A Legal Analysis of Production Sharing Contract Arrangements in the Nigerian Petroleum Industry’ (2015) 5(8) *Journal of Energy Technologies and Policy* 1-11; Abbas Ghandi and Cynthia Lin ‘Oil and Gas Service Contracts around the World: A Review” (University of California, United States, 2013) 1-17; Helen Obioma and Onyi-Gelle ‘National Participation in the Nigeria Oil and Gas Industry: Prospects and Challenges’ (2016) 7(2) *Journal of Emerging Trends in Educational Research and Policy Studies* (JETERAPS) 134-144 [↑](#footnote-ref-225)
227. NNPC was established in 1977, with the vision of “being a world class oil and gas company driven by

     shared commitment”. [↑](#footnote-ref-226)
228. Royal Dutch Shell (British/Dutch)- later to transform to Shell Petroleum Development Company of Nigeria Limited (SPDC), usually known simply as Shell. Shell operates in Nigeria principally through Shell Petroleum Development Company (SPDC) and Shell Nigeria Exploration and Production Company (SNEPCO), Shell Nigeria Gas (SNG), Shell holds a major stake in Nigeria Liquified Natural Gas (NLNG). Shell’s offshore productions sharing contract operations are operated through Shell Nigeria Exploration and Production Company (SNEPCO).

     Chevron Nigeria Limited (CNL): A joint venture between NNPC (60%) and Chevron (40%) has in the past been the second largest producer (approximately 400,000 barrels per day (64,000 cubic metres per day)), with fields located in the Warri region west of the Niger river and offshore in shallow water, and both Shell and Chevron have been overtaken in size of production with the merger of Esso and Mobil, now referred to as [ExxonMobil](https://en.wikipedia.org/wiki/Exxon-Mobil" \o "Exxon-Mobil). A joint venture between the NNPC (60%) and ExxonMobil (40%) operates in shallow water off Akwa-Ibom State in the Southeastern delta and averaged production of 632,000 barrels per day (100,500 cubic metres per day) in 1997. There are also the NNPC/[Agip](https://en.wikipedia.org/wiki/Agip" \o "Agip) (Italian) Nigerian Agip Oil Company Limited (NAOC) joint venture operated by Agip and the NNPC/Total (French),Total Petroleum Nigeria Limited (TPNL) joint venture. [↑](#footnote-ref-227)
229. Section 2, Petroleum Act 2004. [↑](#footnote-ref-228)
230. The number of PSC arrangements has increased since then as the FG, through its agency the NNPC, has signed PSCs with several other oil companies like Shell, BP-Statoil, Esso, Elf and Conoco. PSCs came into being due to government funding constraints, high geologic risk in Deep Water and Inland Basins, redirection of scarce resources, retention of title to concessions and drive to increase reserve base. These led to the introduction of the post-1993 variant of the PSC arrangement for all new acreages and in the deep offshore.. [↑](#footnote-ref-229)
231. 201 – 500 meters water depth ……………………………………….12%

     501 – 800 meters water depth ……………………………………….. 8%

     801 – 1000 meters water depth ……………………………………… 4%

     Beyond 1000 meters water depth …………………………………… 0%

     Inland basin water depth …………………………………………… 10%

     Note change to Royalty rates introduced by the Finance Act Amending s.16 of the PSC Act, [↑](#footnote-ref-230)
232. With respect to Marginal Fields, which are fields discovered by the multinational IOC’s but left unattended

     for a period not less than 10 years, this is compulsorily acquired and reallocated to indigenous concession holders to boost local participation in the industry. [↑](#footnote-ref-231)
233. Ibid - s. 2, PPTA [↑](#footnote-ref-232)
234. The Nigeria Sales Tax had a narrower base and was restricted to nine categories of goods, and services,

     whereas the VAT base is broader and includes most professional services and banking transactions, manufactured goods and services, and targets general consumption. [↑](#footnote-ref-233)
235. VATA First Schedule [↑](#footnote-ref-234)
236. VAT on intangibles etc. in section 4.4 of Chapter 4 [↑](#footnote-ref-235)
237. CGTA, CAP C1 2004, Laws of the Federation (LFN), see also *Sahara Energy Exploration and Production*

     *Limited v Federal Inland Revenue Service* (Bloomberg Tax 2022) where the TAT ruled that for paragraph 1(2)(b) of the PPTA to apply, an asset must be tangible and intended for petroleum operations. The asset in question is intangible and not meant for petroleum operations and is therefore not covered by PPTA but by CGTA - which imposes CGT on capital gains on the sale of all forms of property, including incorporeal property. [↑](#footnote-ref-236)
238. *FIRS v Total E&P Nigeria Limited, (FHC 2020*), TAT/LZ/010/2013 (unreported) delivered by the Tax

     Appeal Tribunal sitting in Lagos on 20 March 2015. [↑](#footnote-ref-237)
239. Education Tax and the Tertiary Education Trust Fund are regulated by the Education Tax Act, CAP E4,

     Laws of the Federation of Nigeria, 2004 and by the Tertiary Education Trust Fund (Establishment, Etc.) Act 2011. [↑](#footnote-ref-238)
240. Niger Delta Development Commission (Establishment etc.) Act 2000, CAP No 6, Laws of the Federation.

     It was established with the primary purpose of using the sums received from the allocation of the Federation Account (FA) to tackle ecological problems arising from oil exploration in the Niger-Delta region. [↑](#footnote-ref-239)
241. The NLCD Act establishes the Nigerian Content Monitoring Board, and the NLCD Act seeks to address the

     absence of indigenous players involved in transactions in the petroleum industry, where about 90 percent of goods and services used are imported from overseas. The Act seeks to increase indigenous participation by prescribing minimum thresholds for the use of local services. [↑](#footnote-ref-240)
242. Wumi Iledare ‘Oil and the Future of Nigeria: Perspectives on Challenges and Strategic Actions

     for Sustainable Economic Growth and Development’ (2007) *International Association for Energy Economics* 21-25; Oyinpreye Apere ‘Impact of Crude Oil on Nigeria’s Fiscal Policy Formulation’ (2017) 5(3) *European Journal of Research in Social Sciences* 74-83; Yinka Omorogbe ‘Fiscal Regimes’ (Nigerian Extractive Industries Transparency Initiative Civil Society Capacity Building Workshop, Presidential Hotel, Port Harcourt, Rivers State, July 2005) 1-10; Ugo Nwokeji ‘The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions’ (The James A. Baker III Institute for Public Policy, Japan Petroleum Energy Center, Rice University, March 2007). 1-146; Deloitte ‘Implications of Nigeria’s Draft Petroleum Fiscal Policy’ (Deloitte Tax & Regulatory Services, Akintola Williams Deloitte, Lagos, Nigeria, 29 March 2017) 1-5; PwC ‘The National Petroleum Fiscal Policy – Old Wine in a New Bottle?’ (PwC Nigeria, Lagos, Nigeria, March 2017) 1-3 [↑](#footnote-ref-241)
243. Adam Smith, The Wealth of Nations (Thrifty Books) pp 593-594: “The subjects of every State ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is in proportion to the revenue which they respectively enjoy under the protection of the State”. [↑](#footnote-ref-242)
244. Richard Bird and Scott Wilkie ‘Designing Tax Policy: Constraints and Objectives in an Open Economy’ (International Center for Public Policy Working Paper 12-24, International Center for Public Policy, Andrew Young School of Policy Studies, Georgia State University Atlanta, Georgia, United States of America, 2012) 1- 44. [↑](#footnote-ref-243)
245. Ibid. 37, Jeffrey Owens (‘The Role of Tax Certainty in Promoting Sustainable and Inclusive Growth’ UNCTAD, Geneva, 26 October 2018) 1-10) [↑](#footnote-ref-244)
246. The Association of Chartered Certified Accountants (ACCA) ‘Foundations for a sound tax system: simplicity, certainty and stability’ (The Association of Chartered Certified Accountants, Think Ahead, June 2015) 1-12. [↑](#footnote-ref-245)
247. Sarah B. Lawsky, ‘Probably - Understanding Tax Law's Uncertainty’ (2009) 157(4) *University of Pennsylvania Law Review* 1017-1074; Anthony D'Amato ‘Legal Uncertainty’ (1983) 71 *California Law Review* 1-55; Kyle Logue ‘Optimal Tax Compliance and Penalties When the Law is Uncertain’ (2007) 27 *Virginia Tax Review* 241-296. [↑](#footnote-ref-246)
248. With respect to tax, it entails the capacity to make an accurate assessmentof the tax and compliance costs,

     associated with an investment or a continuation of an investment in a country over the lifecycle of the investment/company. Related to this is also the need to enhance tax compliance in line with the law, whilst discouraging aggressive tax planning by taxpayers. [↑](#footnote-ref-247)
249. Fiscal policy refers to the use of government spending and tax policies to influence [economic conditions](https://www.investopedia.com/terms/e/economic-conditions.asp),

     especially [macroeconomic](https://www.investopedia.com/terms/m/macroeconomics.asp) conditions, including aggregate demand for goods and services, employment, inflation, and economic growth. [↑](#footnote-ref-248)
250. Tax policy must strike a balance between securing the revenues needed by governments to finance their

     social and economic programmes and the need for a tax system that promotes innovation, productivity, and inclusive economic growth. [↑](#footnote-ref-249)
251. Noting the difficulties in identifying the content of the concept “legal certainty”, Vanessa Mak defines this

     concept as “the predictability of outcomes in legal disputes”; *The Principle of Legal Certainty in EC*

     *Law.* Law and Philosophy Library, vol 64. Springer, Dordrecht. <https://doi.org/10.1007/978-94-017-0353->6\_6 (2013). [↑](#footnote-ref-250)
252. See chapter 6 of the Thesis - The research survey and questionnaires will seek to engage with petroleum

     industry critical stakeholders in our effort to articulate the primary reasons for some of the ambiguities and lapses observed in upstream petroleum taxation in Nigeria, and how these may be addressed or mitigated. [↑](#footnote-ref-251)
253. Hans Gribnau, *‘Legal Certainty: A Matter of Principle’ Retroactivity of Tax Legislation*, May,

     2013 [Tilburg Law School Research Paper No. 12/2014](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2447386) p. 69 “Predictability of law protects those subject

     to the law from arbitrary State interference with their lives. Legal certainty enables people to plan their future”. [↑](#footnote-ref-252)
254. Friedrich A. Hayek, *H[ayek's Project: The Instrumental Justification of the Liberal Market Society](https://academic.oup.com/book/4034/chapter/145690157?itm_content=Oxford_Academic_Books_0&itm_campaign=Oxford_Academic_Books&itm_source=trendmd-widget&itm_medium=sidebar" \t "_self)*

     Roland Kley, Oxford Academic Books, 1994- According to Hayek, clear and definite legal norms are imminently necessary for a free society based on the ideas of Liberalism and a market economy. Also, according to both A Scalia and Ofer Raban in ‘The Fallacy of Legal Certainty: Why Vague Legal Standards may be Better for Capitalism; (*NYU Journal of legislation and Public Policy, 2019/11*), “clear and determinate legal rules allow people to know where they stand (and where they should not stand) and therefore allow them to maximize their freedom”. Uncertainty of tax norms as Thorsten Jobs also makes point of the constitutional principles of legality and certainty of the legal norms for tax and criminal law. In *Tax law, the decisions of the Constitutional Court of the Russian Federation in 2004*. Moscow: Wolters Kluwer. [[Google Scholar](https://scholar.google.com/scholar_lookup?title=Constitutional+principles+of+legality+and+certainty+of+the+legal+norms+of+tax+and+criminal+law&author=Jobs,+Thorsten&publication_year=2006" \t "_blank)]), highlights the fact that citizens as taxpayers cannot, without the help of laws, foresee and predict the consequences. [↑](#footnote-ref-253)
255. [I892] 1 A.C. 150, 154 [↑](#footnote-ref-254)
256. [1921] 1 K.B. 64, 71. This has been cited and approved by many judges including Lord Simon in *Camdim*

     *Eagle Oil Co. v. R.* [1946]1 A.C. 119, Lord Upjohn in *Mapp v. Oram* [1970] 1 A.C. 362, and Lord Donovan *in Mangin v. I.R.C*. [1971]1 A.C. 739. 47 [↑](#footnote-ref-255)
257. The PPTA was first enacted in 1958 and has been subjected to various piecemeal amendments. The

     recent enactment of the Petroleum Industry Act (PIA) is the product of a long-drawn-out effort to carry out a comprehensive review of the taxation and commercial arrangements in the Petroleum sector in Nigeria. [↑](#footnote-ref-256)
258. The 1986 and 1991 MOUs, between NNPC as an Agency of Government and the International Oil

     Company’s (IOC’s). The terms and fiscal incentives granted by the MOUs to the companies were duly recognized and enforced, although never enacted into the PPTA legislative framework. [↑](#footnote-ref-257)
259. PPTA, Cap 354, LFN 1990, S.10(1)(a) -(b); S.20. [↑](#footnote-ref-258)
260. PPTA, Cap 354, LFN 1996 No. 31; 1999 No. 30 [↑](#footnote-ref-259)
261. Cap 350 LFN 1990. [↑](#footnote-ref-260)
262. Statutory Instrument No.3 of 1996. [↑](#footnote-ref-261)
263. No.39 of 1990 [↑](#footnote-ref-262)
264. No.8 of 1996 [↑](#footnote-ref-263)
265. No.7 of 1993 [↑](#footnote-ref-264)
266. No.102 of 1993 [↑](#footnote-ref-265)
267. The PSC arrangement highlights this conflict particularly with respect to the determination of tax liability,

     tax reliefs and allowances for chargeable entities under the JV’s and PSC’s [↑](#footnote-ref-266)
268. See Annex to the PSC’s [↑](#footnote-ref-267)
269. See *Shell Petroleum Development Company Nigeria Ltd v Federal Board of Inland Revenue (supra); Gulf Oil Company (Nig) Ltd v FBIR (1997) NWLR (Pt 514).* [↑](#footnote-ref-268)
270. Ibid - *(1997), NWLR (Pt 514)* [↑](#footnote-ref-269)
271. Ibid - s. 2 PPTA. …and all operations incidental thereto and any sale of or any disposal of chargeable oil by

     or on behalf of the company’. [↑](#footnote-ref-270)
272. NOGC 2 [1996-2000] 80 SC. Also reported in 1996 8 NWLR (Pt. 466) 256. [↑](#footnote-ref-271)
273. It was held in the then Federal Revenue Court in the case of *Shell BP Petroleum Development Company v Federal Board of Inland Revenue* NOGC 1 [1961-1965] 90 FRC that the word “disposal” in PPTA 1959 s 10 is not the same thing as sale. [↑](#footnote-ref-272)
274. The aggregate of what constitutes chargeable oil sold for the purposes of item “b” above, is defined in s. 9 (2) PPTA*,* to include value of oil as determined; the cost of extraction of that oil; as well as any cost incurred by the company in the transportation and storage of that oil between the field of production and the place of its disposal. In relation to chargeable oil owned by a company, disposed of connotes delivery, without sale, of chargeable oil to a refinery or to an adjacent tank for refining by the company. See Advance Taxation, ICAN professional study pack- icanig.org [↑](#footnote-ref-273)
275. S.9(1), PPTA. [↑](#footnote-ref-274)
276. The MOU between the FGN and the companies referred to realizable Price (RP). [↑](#footnote-ref-275)
277. S.9(2) (a) PPTA requires the value of oil to be determined “in accordance with the provisions of any

     enactment applicable thereto and any financial agreement …between the FG of Nigeria and the company”. Additionally, s.23(5) defines posted price in relation to crude oil valuation, as the price (of crude oil) at the Nigerian port of export…established by the company, after agreement with the government of Nigeria. [↑](#footnote-ref-276)
278. *Total E &P Nigeria limited v Federal Inland Revenue Service*, consolidated appeals TAT/LZ/034/2013 and

     TAT/LZ/036/2013. The ruling as per Saidu J in Mobil Producing Nigeria Unlimited v FIRS which confirmed the position in *Menakaya v Menakaya* (2001) 9-10 SC1, that an agreement cannot be substituted for a legislative pronouncement is settled law. [↑](#footnote-ref-277)
279. The 2000 MOU is now moribund; however, this has not brought closure to the matter. Although the 2019

     FA has attempted to address the matter, it is important to note that most PSCs provide that the RP shall be based on the FOB sales price for each lifting for a maximum period of nine (9) months. [↑](#footnote-ref-278)
280. [1996] 8 NWLR (pt. 466) 256, also addressed the issue of winning and obtaining petroleum in the context

     of s 2 PA & PPTA definition of petroleum operations. This position is also adopted in *South Atlantic Petroleum Ltd v. Minister of Petroleum Resources (2019) LCN/12662(CA)*, the Court of Appeal specifically held that ownership of petroleum resources in Nigeria is vested in the FGN. The Court of Appeal of Nigeria, Per Salami, J.C.A (as then was) held quite instructively by reaffirming the provision of the Nigerian Petroleum Act by further stating that Section 1(1) of the Petroleum Act, 1969 vests all the petroleum resources in the FGN. [↑](#footnote-ref-279)
281. Ibid 105, para h. [↑](#footnote-ref-280)
282. Ibid 104, paras c-e. [↑](#footnote-ref-281)
283. *Shell Petroleum Development Company Ltd v FBIR* (n 81) 109, para f. [↑](#footnote-ref-282)
284. PPTA s 13, - The following expenses are not allowed for the purpose of calculating adjusted profit:

     i. Any disbursement or expenses not being money wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred, for the purpose of those operations;

     ii. Any capital withdrawn, or any sum employed or intended to be employed as capital;

     iii. Any capital employed in improvement as distinct from repairs;

     iv. Any sum recoverable under an insurance or contract of indemnity;

     v. Rental of or cost of repairs to any premises or part of premises not incurred for the purpose of those operations; etc. [↑](#footnote-ref-283)
285. Section 11, PPTA- non-deductible expenses. [↑](#footnote-ref-284)
286. [1997] 7 NWLR (pt.514) 698; see also L. Atsegbua, “Tax Deduction Under the Petroleum Profits Tax Act:

     *Gulf Oil Co. (Nig.) Ltd. v FBIR”* [1998] 3 M.I.L.B.Q, 122. [↑](#footnote-ref-285)
287. Sections 10(1) (g) & S.II PPTA [↑](#footnote-ref-286)
288. Section 10(1) (f) PPTA allows for interest deductibility on sums on affiliate loans, where the Board is

     satisfied that the interest was payable on capital employed in carrying on its petroleum operations. [↑](#footnote-ref-287)
289. . [2014] 16 TLRN 25. [↑](#footnote-ref-288)
290. . Petroleum Profits Tax Act, Cap P13, LFN (2004. [↑](#footnote-ref-289)
291. . The loan satisfied the “expense deductibility test.” [↑](#footnote-ref-290)
292. . [1993] 7 NWLR (Pt 303) page 49 at page 102. [↑](#footnote-ref-291)
293. The Associated Gas Re-Injection Act further provides that no company engaged in the production of oil and

     gas shall, after the 1st of January 1984, flare gas produced in association with oil without the written permission of the Minister for Petroleum. Under this Act, the Minister has the power to issue a certificate of exemption from the provision of Section 3 to any company upon such terms as he may impose if he is satisfied that utilization or re-injection of the gas produced in a particular field/s is not appropriate. The Act was amended in 1985 to permit a company engaged in the production of oil and gas to continue to flare gas in any field in relation to which the Minister issues a certificate of exemption. [↑](#footnote-ref-292)
294. S**.** 11 PPTA provides for incentives for associated gas produced during upstream petroleum operations. [↑](#footnote-ref-293)
295. As earlier stated, the MOU executed by NNPC on behalf of the FG with the IOC’s were not enacted as

     legislation and became moribund, upon their non-renewal as required by each MOU. [↑](#footnote-ref-294)
296. Section 11(1) PPTA and section 39 of the CITA. [↑](#footnote-ref-295)
297. S.39 CITA deals with fiscal incentives granted for non-associated gas for downstream petroleum

     operations. [↑](#footnote-ref-296)
298. S.17 of the PSC Act defines a Production Sharing Contract (PSC) as; ‘any agreement or arrangement

     made between the Corporation or the holder and any other petroleum exploration and production company or companies for the purpose of exploration and production of oil in the Deep Offshore and Inland Basins’. [↑](#footnote-ref-297)
299. The PPTA provides that CA and annual allowances under the Second Schedule are to be computed on the

     basis of the total accrued qualifying capital expenditure (QCE), and section 20 (1) on chargeable profits and s.20 (2), subject to the restrictions of s. 20(3) & (4) PPTA. [↑](#footnote-ref-298)
300. The Second Schedule on CA computation as amended by s,22 (1) of the PPTA, which the Corporation.

     contests states that the Contractor which executed a PSC with the Corporation in 1993 shall, throughout the duration of the PSC, be entitled to claim an investment tax credit allowance as an offset against tax in accordance with the provision of the PSC. [↑](#footnote-ref-299)
301. Chargeable tax is tax ascertained under the provisions of s 22 of the PPTA, and levied upon the profits of

     each accounting period of any company engaged in petroleum operation during that period, a tax to be charged, assessed and payable in accordance with the provisions of this Act. [↑](#footnote-ref-300)
302. S. 22(3) PPTA [↑](#footnote-ref-301)
303. S. 22(4) refers to the proportion of the percentage of profit of oil split whilst s.22 (5) refers to ‘Contract

     area’ as defined in the PSC. [↑](#footnote-ref-302)
304. The PSC Act expressly states and requires the Corporation or the Holder to make payments on behalf of

     both parties, whilst separate tax receipts are to be issued to NNPC or Holder and the Contractor, respectively. The question that has arisen from this provision is whether the Corporation is required to compute the PPT liability on the Contract Area or and file the returns as prepared by the Contractor. Statutorily, a party liable to PPT is responsible for computing and determining its PPT liability and is entitled to the CA. [↑](#footnote-ref-303)
305. Section 16 PSC Act. LFN [↑](#footnote-ref-304)
306. Ifueko Omogui-Okauro, 'The Challenges of Effective Tax Legislation and Revenue Administration for Funding of Public Services In Nigeria: The Role Of Tax Professionals' (Abuja, 2015) 4. [↑](#footnote-ref-305)
307. These were Shell’s Bonga, ExxonMobil’s Erha, Chevron’s Agbami, and Total’s Akpo and Usan fields, in

     water depths above 1000 metres. Consequently, the Contractors paid zero royalties to the FG in these prolific fields. [↑](#footnote-ref-306)
308. Section 16(1) PSC Act - what is economically beneficial to the Government of the Federation is not defined

     in the provision and no parameters are set for determining, thus may have added to the ambiguity, or non-enforcement of the provision. [↑](#footnote-ref-307)
309. *Attorney Generals of Rivers, Bayelsa & Akwa Ibom States* *vs Attorney General of the Federation*

     *(Respondent)*Suit No. SC964/2016 / Supreme Court of Nigeria judgment of October 17, 2018. [↑](#footnote-ref-308)
310. S.16(2) PSC Act. [↑](#footnote-ref-309)
311. Section 16 (2), which addresses the periodic review of the PSC Act was not brought before the apex Court

     for determination, so this was a missed opportunity for the court to rule on it. The declaratory relief therefore required the calculation retrospectively of the lost revenue for crude oil sales more than the threshold crude price per barrel of $20 in real terms, in line with s. 16 of the PSC Act. [↑](#footnote-ref-310)
312. *A-G Abia & Ors. v. A-G Federation 2003 4 NWLR (Pt.809), 124* and *A-G Federation v. A-G Abia & Ors.*

     *(2001) LPELR 24862 (SC)* also on issues relating to accruals to the Federation Account and manner of its distribution pursuant to *section 162, of the 1999 Constitution* where all the States were parties. The general rule is that *once the issues affect all States*, the A-Gs of all the States will be joint Plaintiffs or if A-G of the Federation is the Plaintiff, he must join all States as Respondents. For example, in *A-G Abia & v. A-G Federation & Ors. SC73/2006 of 23/12/2007,* the Plaintiff joined all other A-Gs in the suit challenging the ability of the Economic and Financial Crimes Commission (EFCC)'s ability to access State Government accounts during their investigations, given the constitutional underpinnings of Nigeria's federal system. [↑](#footnote-ref-311)
313. Other pertinent questions that the consent judgement and the approach adopted by the parties, and which

     require further interrogation include whether the doctrine of legitimate expectation can be extended to include good faith on the part of the Contractors, and the fact that the PSC Contractors were not, and could not have been 'parties' to the case before the SC, given that the matter was instituted pursuant to the original jurisdiction of the SC. [↑](#footnote-ref-312)
314. Clause 19 of the typical 1993 PSC" [↑](#footnote-ref-313)
315. When is liability expected to crystallise under the section? It is not enough to see this court process as

     an uncontested case. The history of NNPC and Government effort at invalidating its accrued liabilities perhaps informed the Government approach under the legal process. [↑](#footnote-ref-314)
316. As a rule of taxation, tax laws cannot be retroactive, as reiterated by the SC in *Peenok Investments*

     *Ltd v. Hotel Presidential (1982) 12 SC 1****.*** See also *SPDCN Ltd v. Amaro 2015 12 NWLR (Pt. 1472), 122 at 140* where the SC held that "*And, unless it affects purely procedural matters, a statute cannot apply retrospectively unless it is made to do so by clear and express terms*." It is also trite that tax laws, being 'coercive' by nature are always strictly construed: *FBIR v. Halliburton (WA) Ltd* *2016 4 NWLR (Pt. 1501) 53 at 89F -90B.* [↑](#footnote-ref-315)
317. See NEITI; Brief states at p.1, that the results reveal that if the PSC contracts had been reviewed in 2008,

     and the fiscal regime from the 2005 PSC licensing round had been applied, additional revenue to the Federation between 2008 and 2017 would have been higher by between $16.03 billion and $28.61 billion. See also Chineme Okafor, *'NEITI: Nigeria Lost $28bn to Outdated Crude Oil PSCs'***,** ThisDay, 04.03.2019: [https://www.thisdaylive.com/index.php/2019/03/04/neiti-nigeria-lost-28bn-to-outdated-crude-oil-pscs/](https://www.thisdaylive.com/index.php/2019/03/04/neiti-nigeria-lost-28bn-to-outdated-crude-oil-pscs/" \t "_blank) (accessed 06.03.2019). NEITI's analysis "was conducted by changing the fiscal regime of the 1993 PSCs to the fiscal regime of the 2005 PSCs." [↑](#footnote-ref-316)
318. The amended royalty regime with a baseline royalty of 10% for crude oil and condensates produced in

     the deep offshore (greater than 200-meter water depth) and 7.5% for the Frontier and Inland Basin when the price exceeds $20 per barrel. The graduated royalty rates are as follows:

     From $0 up to $20 per barrel 0%,

     above $20 and up to US $60 - 2.5%.

     above $60 and up to US $100 - 4.0%,

     above $100 and up to US $150 - 8.0%,

     above $150 - 10.0%. [↑](#footnote-ref-317)
319. Section 16A PSC Act: The mandatory review every 8 years should, therefore, not apply to such PSCs;

     though it is more likely that government will exercise its back-in right in such mining leases in the event of a significant commercial discovery. [↑](#footnote-ref-318)
320. Section 16 (B), PSC Act. [↑](#footnote-ref-319)
321. The Petroleum Industry Act (PIA) which has repealed the PPTA, and other Acts attempts to address some

     of these fiscal policy inconsistencies and structured tax policy and law review. These are identified and examined in Chapter 9 of this Thesis. [↑](#footnote-ref-320)
322. *Shell International Petroleum Mattschappij BV v FBIR* (2011) 4 TLRN 97. [↑](#footnote-ref-321)
323. Lon L. Fuller, *The Morality of Law* (New Haven, Yale University Press, revised edition, 1973), 262. Fuller’s

     definition of a legal system is based on eight ‘principles of internal morality and reflects some key requirements of the principle of certainty of law, as accepted in most common and civil law legal systems. [↑](#footnote-ref-322)
324. See also the case of *United States v Sanchez -Gomez*, No. 13-50561, [1965] (9th Cir. 2007) [↑](#footnote-ref-323)
325. Section 51 of the Constitution of Australia enumerates the legislative powers granted to the Parliament of

     Australia by the Australian States at Federation. Each subsection, or 'head of power', provides a topic under which the parliament is empowered to make laws. [↑](#footnote-ref-324)
326. Section 11 of the Act exempted certain [superannuation funds](https://en.wikipedia.org/wiki/Superannuation_fund" \o "Superannuation fund) from income tax if they invested in

     government securities.  [↑](#footnote-ref-325)
327. TAT/LZ/010/2013 delivered by the Tax Appeal Tribunal sitting in Lagos on 20 March 2015 (Unreported). [↑](#footnote-ref-326)
328. PPTA, section 39(1) states:

     “Errors and defects in assessment and notice**:** No assessment, warrant or other proceeding

     purporting to be made in accordance with the provisions of this Act, shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any Act amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding”. [↑](#footnote-ref-327)
329. Section 37(1) states:

     “Making of assessments, etc**.** (1) Assessments of tax shall be made in such form and in

     such manner as the Board shall authorize and shall contain the names and addresses of the companies assessed to tax or of the persons in whose names any companies (with the names of such companies) have been assessed to tax, and in the case of each company for each of its accounting periods, the particular accounting period and the amount of the chargeable profits of and assessable tax and chargeable tax for that period”. [↑](#footnote-ref-328)
330. Section 15(1) states that:

     the relevant provisions of all existing enactments or laws, including but not limited to the

     Petroleum Act, and the Petroleum Profit Tax Act, shall be read with such modifications as to bring them into conformity with the provisions of this Act, and,

     Section 15 (2) states that

     “If the provisions of any other enactment or law, including but not limited to the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void”. [↑](#footnote-ref-329)
331. Stabilization clauses in contracts are used to mitigate political risks in a host country. A major example

     of the use of legislation to provide stability to Oil and Gas investments is the Nigeria LNG (Fiscal Incentives, Guarantees and Assurances Act). This has been subject to decisions of the court. Nigerian courts have upheld the provisions of the Act to the effect that the NLNG operations be affected by any other law except as amended in terms of the Act; *Niger Delta Development Commission v Nigeria Liquefied National Gas Limited (NDDC v NLNG) (2010) LPELR-CA/PH/520/2007.* [↑](#footnote-ref-330)
332. Section 17, which is the interpretation section, defines production sharing contracts as any agreement or

     arrangements made between the Corporation or the holder and any other petroleum exploration and production company or companies for the purpose of exploration and production of oil in the Deep Offshore and Inland Basins. [↑](#footnote-ref-331)
333. Section 16 (1)- ‘The provisions of this Act shall be subject to review to ensure that if the price of crude oil

     at any time exceeds $20 per barrel, real terms, the share of the government of the Federation in the additional revenue shall be adjusted under the production sharing contracts to such extent ‘, and (2) ‘Notwithstanding the provisions of subsection (1) of this section, the provisions of this Act shall be liable to review after a period of fifteen years from the date of commencement and every five years thereafter.’ [↑](#footnote-ref-332)
334. JV Concession, Gas fiscal regime, PSC regime and the indirect / transaction taxes. [↑](#footnote-ref-333)
335. *Schlumberger Nigeria Limited v. Obio -Akpor Local Government Council,* Suit PHC/1206/2007. [↑](#footnote-ref-334)
336. Ibid. [↑](#footnote-ref-335)
337. 7 All NTC vol. 7. [↑](#footnote-ref-336)
338. Part 11- Taxes and Levies (Approved List for Collection) Act by States. These include Personal Income taxes, Withholding taxes, Capital Gains taxes and Stamp Duties, Road taxes, Business premises taxes etc. [↑](#footnote-ref-337)
339. Ibid. [↑](#footnote-ref-338)
340. (2003) 5 All NTC. [↑](#footnote-ref-339)
341. 6 ALL NTC P356 Line 2, 5-6). A similar decision was reached in *Mama Cass Restaurant v. FBIR* 6 ALL NTC 97, and *Sweet Sensation Confectionaries v. FBIR* FHC/UCS/826/04*.* [↑](#footnote-ref-340)
342. Ibid.-note that the Lagos State government succeeded on appeal to upturn the decision, although on a rather technical ground. [↑](#footnote-ref-341)
343. *Attorney General Rivers State v FIRS & Attorney General of the Federation (suit no FHC/PH/CS/149/2020)*

     *and Emmanuel C. Ukala SAN v FIRS & Attorney General of Federation, (Suit no: FHC/PHC/CS/30/2020.*  [↑](#footnote-ref-342)
344. Item 59 of Exclusive Legislative List – Taxation of Incomes, profits and capital gains, except as otherwise

     prescribed by this Constitution. [↑](#footnote-ref-343)
345. The FIRS is appealing both decisions, and we eagerly await the appellate decision, as this could have

     profound Constitutional implications for the FG and the federating states, and could go beyond the subject matter of VAT. [↑](#footnote-ref-344)
346. Items 7&8 Part II of the Second Schedule to the 1999 Constitution. [↑](#footnote-ref-345)
347. The OECD [Two-Pillar Solution](https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf" \t "_blank)  addresses the tax challenges arising from the digitalisation of the economy.

     Pillar One would re-allocate some taxing rights over multinational enterprises (MNEs) from their home countries to the markets where they have business activities and earn profits, regardless of whether firms have a physical presence. Pillar Two seeks to put a floor on competition over corporate income tax, through the introduction of a global minimum corporate tax rate that countries can use to protect their tax bases.    [↑](#footnote-ref-346)
348. Section 13(2) (c), (e) and (4) of the Companies Income Tax Act (CITA) as amended by Section 4 of the

     Finance Act provides as follows:

     “The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from or taxable in Nigeria:

     (c) if it transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high-frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has a significant economic presence in Nigeria and profit can be attributable to such activity;

     (e) if the trade or business comprises of furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has a significant economic presence in Nigeria; provided that the withholding tax income under this paragraph shall be the final tax on the income of a non-resident recipient who does not otherwise fall within the scope of subsection (2) (a)–(e).

     (4) For the purpose of subsection (2) (c) and (e), the Minister may by order, determine what constitutes the significant economic presence of a company other than a Nigerian company.”

     In the light of the foregoing, the Companies Income Tax (Significant Economic Presence) Order, 2020 (“the Order”) provides that for the purpose of the above provisions of CITA, a non-Nigerian company shall have a significant economic presence in Nigeria where it derives gross turnover or income of more than ₦25 million or its equivalent in other countries, in that year, from any or combination of the following –

     “(i) streaming or downloading services of digital contents, including but not limited to movies, videos, music, ,,, in Nigeria,

     (ii) transmission of data collected about Nigerian users which have been generated from such users’ activities on a digital interface …,

     (iii) provisions of goods or services… directly or indirectly through a digital platform to Nigeria, or

     (iv) provision of intermediation services through a digital platform, website or other online applications. [↑](#footnote-ref-347)
349. . *Saipem Contractors vs FIRS*, [2014] 15 TLRN 76, [↑](#footnote-ref-348)
350. (2018) LPELR-45118(CA). *see also article in The Gravitas Review of Business & Property Law,*

     *December 2018, Vol. 9, No. 4* [↑](#footnote-ref-349)
351. (2011) 4 TLRN (Tax Law Reports of Nigeria) [↑](#footnote-ref-350)
352. (2013) 12 TLRN 1 [↑](#footnote-ref-351)
353. See chapter 3.2 of thesis, pp.87-90, where the multi–tier tax administration under the Federal Constitution of

     Nigeria is discussed. This has implications for the FG, and the State governments as well as the Local government councils. The FIRS administer and enforce the various tax laws in Nigeria at the Federal level, whilst the States administer, assess, and collect taxes through the States Internal Revenue Services (SIRS), and the Local Government Revenue Committees (LGRC) administer and collect taxes at the local council levels. [↑](#footnote-ref-352)
354. Establish clear tax obligation, time of payment, the manner of payment, as well as the amount or quantity,

     of tax to be paid by the taxpayer. The tax dispute resolution process should be transparent and timely. [↑](#footnote-ref-353)
355. In addition to tax litigation, other tools available to achieve tax certainty include tax arbitration, cooperative

     compliance programs, advance pricing agreements, the International Compliance Assurance Program ([ICAP](https://www.oecd.org/tax/administration/international-compliance-assurance-programme.htm)), joint audit and the mutual agreement procedure (MAP). [↑](#footnote-ref-354)
356. Corporate Income tax (CIT) reform has proceeded relatively better compared to PPTA. The PIB and Nigeria

     Petroleum Fiscal Policy (NPFP) review which resulted in the enactment of the PIA was a clear attempt to address the problem of lack of policy consistency and certainty and clarity in petroleum fiscal and tax legislation. [↑](#footnote-ref-355)
357. In *Oando Supply & Trading Ltd v FIRS* (Oando) (2001) 4 TLRN 113, The TAT held that a taxpayer does

     not have to wait for a formal resolution of an objection, since there is no provision in FIRSEA requiring a notice of refusal to amend (NORA), as a condition precedent for instituting a case with TAT. The effect of this ruling is that it gives an aggrieved taxpayer four options when faced with an assessment from the tax authorities. These options are:

     a) to pay up the assessment as required in the notice;

     b) to object to the assessment by sending a notice of such objection in writing to the FIRS within 30 days of the receipt;

     c) to appeal against such assessment to the TAT; and

     d) to pursue options b and c above. [↑](#footnote-ref-356)
358. The literal rule which requires that a provision be interpreted in accordance with the intention of Parliament

     and provides that words are to be given their ordinary and natural meaning. The golden rule which allows the Court to consider the consequences of a particular interpretation and accordingly, if the literal meaning of the words results in an absurdity, then the Court will modify the ordinary meaning of the words to overcome this. This approach contemplates an error in the wording of the provisions so that the a literal meaning may not result in the intention of Parliament being realised as Lord Wensleydale outlined in *Grey v Pearson* ( 1857) 6 HLC 61 at 106); and lastly the mischief rule which is applied where there is ambiguity in the legislation and allows the Court to determine the reasons or purpose for the passing of the Act by parliament, (the mischief to which the Act is directed), and provides for an interpretation to be preferred that advances the purposes of the Act to one that does not. [↑](#footnote-ref-357)
359. Total held 10% interest in Oil Mining Leases (OMLs) 4, 26, 38, 41 and 42. [↑](#footnote-ref-358)
360. In line with Para 1- Second Schedule of PPTA, ‘qualifying capital expenditure’ means expenditure incurred

     in an accounting period, except expenditure specifically excluded such as sums which may be deducted under section 10 of the PPTA etc. [↑](#footnote-ref-359)
361. S. 60 PPTA [↑](#footnote-ref-360)
362. Finance Act 2021 increased the TET from 2% to 2.5%. [↑](#footnote-ref-361)
363. Cap P13, Laws of the Federation of Nigeria (LFN), 2004 (as amended). [↑](#footnote-ref-362)
364. The FHC however, upheld the TAT's decision that tertiary education tax (TET) is not chargeable on the

     balancing charge. It also upheld the Tribunal's decision that interest paid on intercompany loans qualifies as a tax deductible expense for petroleum profit tax (PPT) purposes, provided that the interest rate is at arm's length under terms prevailing in the open market. [↑](#footnote-ref-363)
365. The treatment of petroleum investment allowance (PIA) is like the reconstruction investment allowance under CITA, which is a one-off uplift granted to companies for incurring qualifying capital expenditure (QCE) in the first year of acquisition of an asset and does not form part of the cost of the QCE, to be amortized through annual allowances. Also, although the PIA is included in determining the capital allowance claimed by a company on a QCE in the first year the asset is put to use by the company, it is not considered in computing the residue of the QCE carried forward to subsequent tax years. [↑](#footnote-ref-364)
366. S. 1(i) – (iii) TETA [↑](#footnote-ref-365)
367. As per section 9 (1) (a) PPTA – "the balancing charge to be treated as part of the profits of the company

     is included in the computation of its adjusted profits as well as the assessable profits on which TET is to be assessed”. [↑](#footnote-ref-366)
368. . Unreported Appeal No CA/A/208/2012; Judgment of the Court of Appeal, Abuja delivered on 31 August 2016. [↑](#footnote-ref-367)
369. “… the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil

     causes and matters –

     relating to the revenue of the Government of the Federation in which the said Government or

     any organ thereof or a person suing or being sued on behalf of the said government is a party;

     connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation…” [↑](#footnote-ref-368)
370. Arbitration and Conciliation Act, Cap A18 Laws of the Federation of Nigeria, 2004. [↑](#footnote-ref-369)
371. 1999 Constitution s 6(1) ‘The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.

     (2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.

     (3) The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (1) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record.

     (4) Nothing in the foregoing provisions of this section shall be construed as precluding: -

     the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court; (b) the National Assembly or any House of Assembly, which does not require it, from abolishing any court which it has power to establish or which it has brought into being.

     (5) This section relates to: - (a) the Supreme Court of Nigeria; (b) the Court of Appeal; (c) the Federal High Court; (d) the High Court of the Federal Capital Territory, Abuja; (e) a High Court of a State, sharia courts of appeal, etc. [↑](#footnote-ref-370)
372. Jack Calder, Chapter 1 – What’s Special about Natural Resource Revenue Administration?

     <https://www.elibrary.imf.org/> >, contributory factors include the geology, resource availability, technology, finance, price, political risk, international considerations, and environmental and climate change present their own uncertainties, etc.18 July 2014 [↑](#footnote-ref-371)
373. Philip Daniel, Michael Keen and Charles McPherson (ed), *The Taxation of Petroleum and Minerals:*

     *Principles, Problems and Practice,* Chapter 4 by Carole Nakhle, Minerals, Chapter 4: Petroleum Fiscal Regimes: Evolution and Challenges, (Routledge Publishers 2010). [↑](#footnote-ref-372)
374. Petroleum Act 1969 and Petroleum Regulations, 1967. Laws of the Federation, Cap 350, 1990. [↑](#footnote-ref-373)
375. Nigeria’s Crude oil exploration resulted in the commercial production of crude oil in 1958, with up to

     5100 barrels exported. [↑](#footnote-ref-374)
376. Source: The United Nations University World Institute for Development Economics Research (UNU-

     WIDER), Helsinki. [↑](#footnote-ref-375)
377. Victor E. Eromosele (edited), Energy Insight Nigeria, (2020 special edition), Chapter 1-Raising industry

     performance: some global lessons, pp.23-25, Dapo Okubadejo, partner and head of Deals Advisory, KPMG Nigeria. - The strategy should include clear definition of government economic and fiscal objectives, maximising. revenues for the State, maintaining security of supply of national control of resources, capacity building and proper regulatory framework, the development of oil and gas knowledge center, the definition of NOC roles and objectives, ensuring the presence of enablers such as financing, accountability and transparency and effective operations performance management and monitoring. [↑](#footnote-ref-376)
378. Ayodele Odusola, Tax Policy Reforms in Nigeria, Research Paper No. 2006/03. (UNU World Institute

     for Development Economics Research (UNU-WIDER) Katajanokanlaituri 6 B, 00160 Helsinki, Finland) [↑](#footnote-ref-377)
379. The MOU, first signed in 1986, was revised in 1991 and again in 2000. The aim of the MOU was to

     secure a profit margin for the oil companies during difficult oil market conditions and achieve increased reserves for the country with the award of the Reserve addition bonus (RAB) incentives to investing companies. [↑](#footnote-ref-378)
380. [International Monetary Fund (IMF)](https://www.imf.org/en/Home): Fiscal policy describes two actions by the government. The first is

     taxation. By levying taxes, the government receives revenue from the populace. Taxes come in many varieties and serve different specific purposes, but the key concept is that taxation is a transfer of assets from the people to the government. The second action is government spending. This may take the form of wages to government employees, social security benefits, smooth roads, or fancy weapons. When the government spends, it transfers assets from itself to the public. Since taxation and government spending represent reversed asset flows, we can think of them as opposite policies. [↑](#footnote-ref-379)
381. Oil and Natural Gas Fiscal Best Practices: Lessons for State and Local Governments. (Headwaters

     Economics) November 2012. [↑](#footnote-ref-380)
382. Silvana Tordo, Fiscal Systems for Hydrocarbons -Design Issues, (World Bank Working Paper No 123),

     chapter 1, p.1. Many fiscal systems around the world make use of sliding scales for the determination of at least one of the following parameters: royalty, bonuses, profit oil/gas split, cost recovery, and taxes. [↑](#footnote-ref-381)
383. See others such as the Nigeria LNG Act, and the Production Sharing Contract (PSC). [↑](#footnote-ref-382)
384. Philip Daniel, Michael Keen and Charles McPherson*: The Taxation of Petroleum Mineral and Principles,*

     *Problems and Practice.* Chapter 15, Time Consistency in Petroleum Operations, pp. 425-444 [↑](#footnote-ref-383)
385. [International Monetary Fund (IMF)](https://www.imf.org/en/Home) (2003), Fiscal Policy Formulation and Implementation in Oil-Producing

     Countries, Editors: J.M Davis, R. Ossowski, and A. Fedelino. Moreover, studies also have shown that resource-dependent economies tend to grow more slowly than non-resource-dependent ones at comparable levels of development. [↑](#footnote-ref-384)
386. Ayodele F. Odusola, 2006. "[Tax Policy Reforms in Nigeria](https://ideas.repec.org/p/unu/wpaper/rp2006-03.html)," [WIDER Working Paper Series](https://ideas.repec.org/s/unu/wpaper.html) RP2006-03,

     World Institute for Development Economic Research (UNU-WIDER). [↑](#footnote-ref-385)
387. The Nigeria National Tax Policy (NTP), 2012 outlines the key provisions under Chapter 2 of the

     Constitution of the Federal Republic of Nigeria 1999. The 1999 Constitution articulates the fundamental objectives and directive principles of State policy relevant to tax policy design and development. These include honest declaration of income and payment of tax; fiscal responsibility and accountability; promoting a planned and balanced economic development; securing maximum welfare, justice, and equity; etc. [↑](#footnote-ref-386)
388. NTP 2012, pp 41- 42 [↑](#footnote-ref-387)
389. Section 44 (3) of the Constitution of the Federal Republic of Nigeria 1999; the DPR, MOPR, Nigerian

     National Petroleum Corporation Act; the Deep Offshore and Inland Basin Production Sharing Contract Decree (1999); the Petroleum Profits Tax Act (PPTA) as amended; the Petroleum Act, and the Petroleum (Drilling and Production) Regulations and Petroleum Refining Regulations. [↑](#footnote-ref-388)
390. DPR, NNPC, MPR etc. [↑](#footnote-ref-389)
391. Silvana Tordo, *Fiscal Systems for Hydrocarbons: Design Issues*. World Bank Working Paper No. 123

     (2007). [↑](#footnote-ref-390)
392. A very important element of profitability of a project is the oil price level. The variability and

     volatility of oil prices provides for the possibility that even projects with normal profits can experience periods where excess profits are generated. [↑](#footnote-ref-391)
393. With respect to the investing company, a tax is neutral when it leaves the pre-tax ranking of possible

     investment outcomes equal to the post-tax ranking. [↑](#footnote-ref-392)
394. The Nigeria LNG Fiscal Guarantees and Assurance regime is a typical example of a stable regime with

     guarantees and freezing clauses. Also, the Nigeria Local Content Law for the Oil Industry is yet another attempt at using legislation to address a specific need to build local capacity in the sector. [↑](#footnote-ref-393)
395. Abba Kolo & Thomas W. Walde, *Renegotiation and Contract adaptation in the international investment*

     *projects: Applicable Legal Principles & Industry practices*, Transnational Dispute Management, Volume 1, Issue 01, February 2004. [↑](#footnote-ref-394)
396. See the Aberdeen and Grampian Chamber Oil and Gas Survey, 2004–05, on the importance of fiscal

     Stability, the report concludes: “The last two years have witnessed an upturn in North Sea activity along with increased capital investment and drilling activity. Our first three surveys charted this rise in activity and the parallel rise in business confidence. A recurrent theme throughout previous surveys has been the critical importance of a stable tax regime if this rise in North Sea activity is to continue. The Government’s decision to increase the supplementary North Sea oil charge from 10% to 20% jeopardizes the fiscal stability essential to sustain activity, encourage investment and maintain the North Sea’s longevity. As we predicted, we can now see the first signs of the impact the Chancellor’s pre-budget report has had on investment plans for the UK continental shelf.” [↑](#footnote-ref-395)
397. Source- http://www.norskpetroleum.no/en/economy/petroleum-tax/. [↑](#footnote-ref-396)
398. Ibid - Silvana Tordo, Fiscal Systems for Hydrocarbons: Design Issues. [↑](#footnote-ref-397)
399. The government take is the host government’s share of the revenue streams associated with a particular

     project. It is normally expressed in percentage terms. [↑](#footnote-ref-398)
400. Petroleum Industry Bill (PIB) 2008, National Oil and Gas Policy documents and the National Petroleum

     Fiscal Policy documents of 2016/2017, [↑](#footnote-ref-399)
401. The command-and-control approach enables the monitoring and compliance agencies with a considerable

     power towards issuance of detailed regulations and enforcing sanctions. [↑](#footnote-ref-400)
402. The Ten Commandments refer to a policy outlook of the main principles for national oil policy in Norway.

     It provides a comprehensive foundation for managing the Norwegian petroleum industry. The Norwegian legislative framework is mainly the Petroleum Activities Act 1996 (PAA) and associated with the Act, 1997 Petroleum Regulations (PRs), reflecting an objective-based system. [↑](#footnote-ref-401)
403. See chapters 3 and 4 of thesis. [↑](#footnote-ref-402)
404. The introduction of the PSC fiscal regime and the subsequent enactment of the PSC Act was a major

     fiscal and law intervention, which raised several contentious issues. The Nigeria Liquefied Natural Gas Guaranty and Assurances Act was a clear attempt at the introduction of fiscal incentives to address downstream gas development. [↑](#footnote-ref-403)
405. Victor E. Eromosele (Ed), *Energy Insight Nigeria: Evolutionary two decades in retrospect,*chapter 5

     on Petroleum Industry Regulatory Lessons in Retrospect, by Godwin Ukpiama Billy-Agha. [↑](#footnote-ref-404)
406. Nigerian Liquified Natural Gas Fiscal Incentives, Guarantees and Assurance Act 1989. The framework for this development is the unincorporated joint venture arrangements, with NNPC. [↑](#footnote-ref-405)
407. National Energy Policy (2003) preceded the National Oil and Gas Policy of 2007. [↑](#footnote-ref-406)
408. Oziri M.H, and M.C. Achinike, *‘Reforms in the Oil and Gas Sector in Nigeria from 1999 – Critical*

     *Appraisal’* < <https://sarpublication.com/media/articles/SARJHSS_41_26-33.pdf>> accessed 20 April 2024 [↑](#footnote-ref-407)
409. The NOGP was based on the work of the 1st OGIC committee led by Dr. Rilwan Lukman in 2000.

     Members of 2nd OGIC included Dr. Rilwanu Lukman as chairman, Dr. Emmanuel Egbogah, the then Permanent Secretary of the Ministry of Energy, the Group Managing Director, NNPC Member, the Director of DPR, the Executive Secretary, the Director (Oil and Gas) of the Bureau of Public Enterprise (BPE), and PENGASAN (the oil workers union). [↑](#footnote-ref-408)
410. See appendix V [↑](#footnote-ref-409)
411. The PIB was not passed in the 6th and 7th NA. The 8th NA in an effort to enact parts of the bill

     unbundled and divided the bill into three pieces, to wit: Petroleum Industry Governance Bill, Host

     Communities and Fund Bill, and the Petroleum Fiscal Framework Bill. [↑](#footnote-ref-410)
412. The National Oil Policy (NOP) (2016), identified reasons why Nigeria needs a new Petroleum Fiscal Policy

     as discussed in section 5.2.5 below. [↑](#footnote-ref-411)
413. To complement the NOP, the National Gas Policy (NGP) articulates Government’s vision and sets policy

     goals, strategies, and an implementation plan for the introduction of an appropriate institutional, legal, regulatory and commercial framework to resolve the barriers currently affecting investment in gas. Based on the vision to convert Nigeria into an attractive gas-based industrial nation, with significant presence in national and international markets, the Policy has the following key aspirations or goals:

     transiting the economy from oil to gas;

     deepening utilization of gas in the domestic market in order to facilitate the growth of strategic sectors as well as gaining a presence in international markets;

     clear division of roles between private and public sectors;

     creating an enabling environment for increased private sector participation;

     addressing environmental issues, including gas flaring; and

     clarifying the rules guiding investment in the gas sector. [↑](#footnote-ref-412)
414. The oil world has now changed significantly. Oil price has continued to fluctuate after its crash. Its forecast

     may continue to remain at a median of $45/bbl, for the foreseeable future. Production around the world remains high, combined with large inventories in storage and even in tankers around the world. [↑](#footnote-ref-413)
415. Draft National Oil Policy-2016 [↑](#footnote-ref-414)
416. See Appendix for the National Oil Policy and National Gas Policy documents. [↑](#footnote-ref-415)
417. See appendix IV [↑](#footnote-ref-416)
418. Such as LNG Liquefaction, gas processing, gas storage, transportation, and distribution. [↑](#footnote-ref-417)
419. The gas pricing framework will be embedded in a revised National Domestic Gas Supply & Pricing

     Regulation. [↑](#footnote-ref-418)
420. The GRMP will identify gas resources in different geological areas, identify current and potential gas markets, identify infrastructure needs, and analyze how best to access low-cost gas for delivery to domestic markets. The GRMP will also classify gas resources along the following lines: low-cost assets dedicated for domestic gas supply (National Preferential Assets), Assets dedicated for export, National Strategic Gas Reserve (reserved for future development), and optional assets (sole risk assets). [↑](#footnote-ref-419)
421. This would maximize availability of associated gas supply for power generation. [↑](#footnote-ref-420)
422. The NPFP was approved by the FG in 2017, being a product of the industry reform effort, commenced with

     the PIB. This was conceived to address three central themes which coexist in a delicate equilibrium: increase economic rent to government, resolve long standing socio-environmental issues and encourage a stable investment climate. However, due to a lack of traction in passing the PIB in its all-encompassing form, in 2016 the PIB was split into four Bills to expedite assent to law. One of such was the Petroleum Fiscal Framework Bill (PFFB). This Bill presented the National Petroleum Fiscal Policy (NPFP) as the way forward on the fiscal framework for the Nigerian Petroleum Industry.  [↑](#footnote-ref-421)
423. Section 10(1) of the PPTA, specifically states, that ‘in computing theadjusted profits of any company

     of any accounting period from itspetroleum operations, thereshall be deducted expenditure or costs incurred. Accrued estimated amounts for decommissioning or cost of abandonment, are by virtue of the provision of s.10(1) not allowed tax expense or deductible for PPT. [↑](#footnote-ref-422)
424. See chapter 4 of thesis, where these are examined. [↑](#footnote-ref-423)
425. . Wumi Iledare, L. Wahab and CJ Diji ‘*Comparative Analysis of Nigeria Petroleum Fiscal Systems Using Royalty and Tax Optimization Models to Drive Investments*’ (2017) 3(3) Oil and Gas Research 1-14; Sani Saidu and Abdel Mohammed ‘The Nigerian Petroleum Industry Bill: An Evaluation of the Effect of the Proposed Fiscal Terms on Investment in the Upstream Sector’ (2014) 2(2) *Journal of Business and Management Sciences* 45-57; Silvana Tordo ‘Fiscal; Systems for Hydrocarbons: Design Issues’ (World Bank Working Paper No. 123, The World Bank, Washington, D.C., United States of America) 1-86

     Ahmed Isau ‘Transfer Pricing: The Nigerian Perspective’ (2014) 2(2) *International Journal of Accounting and Taxation* 23-28; Andersen Tax ‘Uncertainty in the Nigerian Fiscal Regime: The Case of Royalty Payment in the Oil and Gas Industry’ (Andersen Tax Nigeria, Lagos, Nigeria, 14 August 2018) 1; KPMG ‘Transfer Pricing Awareness Survey’ (KPMG Nigeria, Lagos, Nigeria, June 2017) 1-28; Vanguard ‘Fiscal policy to quell uncertainty in petroleum industry – Country Chair, SPE’ (Vanguard, Lagos, Nigeria, 1 August 2017) <<https://www.vanguardngr.com/2017/08/fiscal-policy-bill-to-quell-uncertainty-in-petroleum-industry-country-chairspe/>> accessed 20 April 2024 [↑](#footnote-ref-424)
426. A progressive regime can better stand the test of time and cope with volatile oil and gas prices, unlike a

     regressive regime, and many less developed resource owning countries are slow to respond to changes in the oil and gas market – see article in Tax Notes 2020 by Carole Nakhle and Acheampong in *Oil and Gas Fiscal Policies: The Impact of Oil Price, Investment, and Production Trend.* [↑](#footnote-ref-425)
427. Private sector operators will operate on an equal basis with the Government-owned operators. Preference

     will be given to the most competent operators. If Government-owned companies fail to succeed in a competitive marketplace, they will be divested or closed, and the private sector will be encouraged to take that place in the market. This approach will create a market-based economy with equal opportunity of access that will help move the economy forward and attract private sector investment, based on clear regulations and legislation. [↑](#footnote-ref-426)
428. The House of Representative and the Senate. [↑](#footnote-ref-427)
429. The Petroleum Industry Bill (PIB) was enacted in August 2021, as the Petroleum Industry Act (PIA). It

     has taken close to two decades to design the appropriate fiscal and tax policy, as well as create the necessary regulatory framework and agencies to manage the industry. Translating these policy objectives and provisions into a competitive, stable, clear and enforceable tax statutes for the industry. The changes introduced by the PIA is examined in detail in Chapter 9 of the Thesis. [↑](#footnote-ref-428)
430. S.58(1), 1999 Constitution [↑](#footnote-ref-429)
431. The PIB went through several readings by different NA sessions, from 2008 when it was first presented as

     an Executive Bill, before its final enactment following the Presidents consent in 2021, and after several reviews and unbundling of the PIB [↑](#footnote-ref-430)
432. According to section 58(4) of the 1999 Constitution of Nigeria (as amended), where a bill is presented

     to the President for assent, he has thirty days to signify whether he assents or withholds assent. [↑](#footnote-ref-431)
433. The first option is for the National Assembly to review the matter on which the President has based his

     refusal of assent and would have to pass the Bill and transmit it again to the President for assent. The second option is for the National Assembly to override presidential assent and simply pass the Bill with a two-thirds majority in each chamber. According to section 58(5) of the Constitution, if the National Assembly does this, the Bill shall become law, and the assent of the President will not be required. [↑](#footnote-ref-432)
434. See Chapter 9 of Thesis for the analysis of the PIA. [↑](#footnote-ref-433)
435. See Appendices I & II [↑](#footnote-ref-434)
436. Appendix I-Survey Questionnaire. [↑](#footnote-ref-435)
437. One judicial officer and some tax authority officials completed the questionnaire. A few others however

     informally offered thoughts and perspectives on the subject matter of survey during follow up calls. [↑](#footnote-ref-436)
438. See Appendix I & II – Survey Questionnaire and Survey Responses received. [↑](#footnote-ref-437)
439. Clarity is obviously an important factor for achieving understanding and certainty, as much as mutual

     trust is enhanced by open, transparent, and principle-based engagement. [↑](#footnote-ref-438)
440. Ministries of Finance (MoF), Petroleum Resources (MPR), Justice (MoJ), Budget and Planning (MBP),

     National Assembly (NA) and NNPC. [↑](#footnote-ref-439)
441. Clarity, Certainty and Consistency of Understanding of Tax Legislation. [↑](#footnote-ref-440)
442. Taxes and Levies (Approved List for Collection) no 2, 1998, as amended by the Taxes and Levies

     (Approved List for Collection) Order 2015.   
      [↑](#footnote-ref-441)
443. PPT rates of 65.75%, 85% under the PPTA and 50% under the PSC and 30% for downstream

     petroleum operations under the CITA. [↑](#footnote-ref-442)
444. This may be achieved through frequent training and enlightenment engagement sessions with the

     industry operators, to bridge the gaps. Interaction with other tax administrators, particularly the exposure and lessons from the UK petroleum tax system in the UK Oil and Gas Tax Office may have informed the proposal for the dual fiscal regime introduced recently in the Petroleum Industry Act. [↑](#footnote-ref-443)
445. PPTA rates of 65.75%, 85%, and 50% for petroleum, and CITA rate of 30% for gas income, [↑](#footnote-ref-444)
446. PPTA and PSC Act rates 66.75/85%/50%, and 30% Gas income rates, whilst cost is expensed at 85%. [↑](#footnote-ref-445)
447. PIA has now been enacted and is effective, August 16th, 2021. [↑](#footnote-ref-446)
448. HMRC Oil Taxation Manual: Over the last 40 years the UK has developed into one of the world’s major oil

     production countries. The development of the North Sea has coincided with a range of substantial technological developments within the oil industry, including 3D and 4D seismic, deep water and horizontal drilling, and the more sophisticated use of IT to process and interpret data. The structure of the oil industry in the North Sea is also changing. Once dominated by the oil majors, there has in recent years been a steady divestment of North Sea assets by these groups and the increasing involvement of comparatively smaller oil companies. – Source:OT00010 - The taxation of the UK oil industry: an overview. [↑](#footnote-ref-447)
449. Gas was first found in quantity in the Groningen area of the Netherlands in 1959. This was followed by

     the first British discovery of gas in the West Sole field, off the coast of East Anglia, by the BP jack-up drilling rig Sea Gem, late in 1965. [↑](#footnote-ref-448)
450. Petroleum Economist, Statistical Annual. London, The Petroleum Economist Ltd., CHASE Oil & Gas

     Group (1995). [↑](#footnote-ref-449)
451. According to Stuart McWilliam, these statistics make a mockery of claims that the UK is a leader in the fight

     against climate change. [Minister of State (Minister for Energy and Climate) - GOV.UK (www.gov.uk)](https://www.gov.uk/government/ministers/minister-of-state-minister-for-climate). [↑](#footnote-ref-450)
452. Source: Transport, heating, and electricity each account for about one-third of the UK's primary energy

     needs. O&G are also major feedstocks for the petrochemicals industries producing pharmaceuticals,

     plastics, cosmetics, and domestic appliances. [↑](#footnote-ref-451)
453. Mabro R, Bacon, R. Chadwick M. Halliwell, D. Long. *The Market for North Sea Crude Oil*.

     Oxford University Press (1986). UK oil and gas supply chain services domestic activities and exports

     about £12 billion of goods and services to the rest of the world. [↑](#footnote-ref-452)
454. UK energy security: www.gov.uk. [↑](#footnote-ref-453)
455. Adam Seymour, The Oil Price and Non-OPEC Supplies, Oxford Institute for Energy Studies Papers on the

     World Petroleum Market, (Aldgate Press,1990). [↑](#footnote-ref-454)
456. [United Kingdom Oil Reserves, Production and Consumption Statistics - Worldometer](https://www.worldometers.info/oil/uk-oil/). [↑](#footnote-ref-455)
457. [Net Zero (oeuk.org.uk)](https://oeuk.org.uk/net-zero/), In March 2021, the UK government and UK oil and gas industry agreed a deal to

     harness the sector’s 50 years of energy expertise. The first of its kind by any G7 nation, the North Sea Transition Deal will accelerate the green energy transition and create a new generation of exciting jobs in communities across the country’s heartlands. [↑](#footnote-ref-456)
458. Petroleum Revenue Tax is a tax on the profits from oil and gas production in the UK or on the UK

     continental shelf. The tax only applies to fields that were approved before 16 March 1993, known as ‘taxable fields’. [↑](#footnote-ref-457)
459. [Oil Taxation Act 1975 (1975 c. 22)](https://en.wikipedia.org/wiki/Oil_Taxation_Act_1975" \o "Oil Taxation Act 1975), [Petroleum Revenue Tax Act 1980](https://en.wikipedia.org/wiki/Petroleum_Revenue_Tax_Act_1980" \o "Petroleum Revenue Tax Act 1980) (1980 c. 1), Oil Taxation Act 1983,

     (1983 c. 56), [Petroleum Royalties (Relief) Act 1983](https://www.legislation.gov.uk/ukpga/1983/59/contents/enacted) (1983 c. 59), [Advance Petroleum Revenue Tax Act 1986](https://www.legislation.gov.uk/ukpga/1986/68/contents) (1986  c. 68), [Petroleum Royalties (Relief) and Continental Shelf Act 1989](https://www.legislation.gov.uk/ukpga/1989/1/contents/enacted) (1989 c. 1). [↑](#footnote-ref-458)
460. Tracey Bowler, *Tax policy making in the UK*. London: IFS. (2010). Available

     at: <https://ifs.org.uk/publications/tax-policy-making-uk> (accessed: 20 April 2024). [↑](#footnote-ref-459)
461. Since the O'Donnell reforms of 2004 lead responsibility and accountability have rested with HM Treasury

     and HMRC have been responsible for policy maintenance.  [↑](#footnote-ref-460)
462. Thomas Pope, Gemma Tetlow, Arun Advani, How is evidence used in tax policy making, Report, Institute

     for Government, [www.instituteforgovernment.org.uk](http://www.instituteforgovernment.org.uk) . [↑](#footnote-ref-461)
463. A Guide to UK Taxation, May 2019, since 2010, the Government has undertaken a comprehensive review

     of the UK tax system, consulting with business on the direction and design of reforms. UK Tax policy has been made simpler, more transparent, and therefore better suited to a globalized trading world and to modern business practice. [↑](#footnote-ref-462)
464. United Kingdom, HM Treasury and HM Revenue & Customs, *Tax Policy Making: A New Approach*

     (London: HM Treasury, June 2010), together with *The New Approach to Tax Policy Making: A Response to the Consultation* (London: HM Treasury, December 2010). [↑](#footnote-ref-463)
465. John Whiting and Malcolm Gammie, Tax Policy Making in the United Kingdom, The Process of Making

     Tax Policy: An International Comparison - The Proceedings of a Round Table on the Tax Policy Process), p.8. Published by the Institute of Fiscal Studies. The authors delve into the intricacies of tax policy development. https://ifs.org.uk/sites/default/files/output\_url\_files/dp8.pdf [↑](#footnote-ref-464)
466. http://www.gov.uk/government/consultations/review-of-the-oil-and-gas-fiscal-regime-a-call-for-evidence. [↑](#footnote-ref-465)
467. Sir Ian Wood’s Report recommended maximising economic recovery and set out the size of the prize, with

     around a quarter of the UK’s offshore oil and gas still to be exploited. That is why at Budget 2014 the Chancellor announced a review of the oil and gas fiscal regime to ensure it is consistent with the principles of Sir Ian’s report and to enable the UK Continental Shelf (UKCS) to compete in the global race for investment. The government’s response sets out the conclusions of that review: a radical plan to reward investment in the UKCS at all stages of the industry life cycle. It recognises that to maximise investment we need to reduce the overall tax burden facing the industry and sets out long-term principles for the future that we believe the government and industry can both buy into as well as specific actions to ensure a more competitive, simple, and predictable fiscal regime. [↑](#footnote-ref-466)
468. The ring fence prevents taxable profits from oil and gas extraction being reduced by losses from other

     activities or by excessive interest payments. The rates of RFCT differ from those of Corporation Tax. The main rate of RFCT is 30%. [↑](#footnote-ref-467)
469. Basic UK taxes include income taxes, capital gains tax, UK inheritance tax, and Value Added

     Tax (VAT**)**. Many of these are progressive taxes, meaning that those with higher incomes pay a higher rate.Income tax is charged at graduated rates, with higher rates of income tax applying to higher bands of income. Tax is charged on total income (from all earned and investment sources) less certain deductions and allowances.  [↑](#footnote-ref-468)
470. G20 Leader at the 2016 Summit stated: “We emphasize the effectiveness of tax policy tools in supply-

     side structural reform for promoting the benefits of tax certainty to promote investment and trade and ask the OECD and IMF to continue working on tax certainty”. [G20 Leaders' Communique Hangzhou Summit - G20 - China 2016](http://www.g20chn.org/English/Dynamic/201609/t20160906_3396.html) [↑](#footnote-ref-469)
471. [↑](#footnote-ref-470)
472. Eighth report: principles of tax policy, HC 753, (PDF) 15 March 2011 para 84. [↑](#footnote-ref-471)
473. The absence of a structured tax and fiscal policy design process as is the case in the United Kingdom has

     contributed to the lack of fiscal and tax policy reform and sustained petroleum and tax law development and certainty in the Nigeria petroleum industry. [↑](#footnote-ref-472)
474. In the case of Nigeria, these are Federal allocations to States and local government. [↑](#footnote-ref-473)
475. Andy Lymer, Lynne Oats, Taxation Policy and Practice (26th edition 2019/2020). These reviews have been

     critical in addressing fiscal imbalance in the tax system, unlike the case in Nigeria, where the Presidential review and directive has failed to address the Constitutional origins and basis of the Nigerian fiscal imbalance between the FG and the federating States and local governments. [↑](#footnote-ref-474)
476. The Budget Review explains the policy considerations underlying the numbers presented in the budget. [↑](#footnote-ref-475)
477. The OTS was [set up on 20 July 2010](https://www.gov.uk/government/news/office-of-tax-simplification) and made a permanent independent Office of HM Treasury on 21 July

     2015. It was then placed on a [statutory basis](https://www.gov.uk/government/news/ots-legislation) in sections 184 to 189 of, and Schedule 25 to, Finance Act 2016, which [came into effect](https://www.gov.uk/government/news/ots-legislation-goes-live) as from 28 November 2016 by virtue of Statutory Instrument 2016/113. The OTS has now been abolished. It had a board led by an independent Chair and Tax Director, and had up to eight further members, supported by a team drawn from the civil service and the private sector. [↑](#footnote-ref-476)
478. The Office for Budget Responsibility (OBR) is a [non-departmental public body](https://en.wikipedia.org/wiki/Non-departmental_public_body" \o "Non-departmental public body) funded by the [UK Treasury](https://en.wikipedia.org/wiki/UK_Treasury" \o "UK Treasury),

     that the UK government established to provide independent [economic forecasts](https://en.wikipedia.org/wiki/Economic_forecast" \o "Economic forecast) and independent analysis of the public finances. It was formally created in May 2010 following the [general election](https://en.wikipedia.org/wiki/2010_United_Kingdom_general_election" \o "2010 United Kingdom general election) (although it had previously been constituted in shadow form by the Conservative party opposition in December 2009)and was placed on a statutory footing by the [Budget Responsibility and National Audit Act 2011](https://en.wikipedia.org/wiki/Budget_Responsibility_and_National_Audit_Act_2011" \o "Budget Responsibility and National Audit Act 2011). It is one of a growing number of official independent [fiscal watchdogs](https://en.wikipedia.org/wiki/Fiscal_council" \o "Fiscal council) around the world. [↑](#footnote-ref-477)
479. The 2011 United Kingdom budget, officially called 2011 Budget – A strong and stable economy, growth,

     and fairness, was delivered by [George Osborne](https://en.wikipedia.org/wiki/George_Osborne" \o "George Osborne), the [Chancellor of the Exchequer](https://en.wikipedia.org/wiki/Chancellor_of_the_Exchequer" \o "Chancellor of the Exchequer), to the [House of Commons](https://en.wikipedia.org/wiki/House_of_Commons_of_the_United_Kingdom" \o "House of Commons of the United Kingdom) on 23 March 2011. [↑](#footnote-ref-478)
480. The Institute for Fiscal Studies, in its 2011 Green Budget was generally supportive of these developments,

     but also noted that tax policy is subject to less scrutiny in Parliament than other areas of public policy and that the split of policy making responsibility between HM Treasury and HMRC is not ideal. [↑](#footnote-ref-479)
481. The petroleum fiscal regime of a country is a set of laws, regulations and agreements which governs the

     economic benefits derived from petroleum exploration and production. The regime regulates transactions between the political entity and the legal entities involved. A commercial or legal entity in this context is commonly an oil company, and two or more companies may establish partnerships to share economic risks and investment capital as is the case in Nigeria and many resource rich and finance and technology deficient countries. [↑](#footnote-ref-480)
482. This has informed the recommendation for a comprehensive reform of the Nigerian Petroleum Industry,

     which resulted in the Nigeria Petroleum Industry Bill (NPIB), 2008. [↑](#footnote-ref-481)
483. From inception in the early 1960’s, to the year 2010, and beyond, the UK petroleum fiscal and tax regime

     witnessed significant developments. The noticeable phases of the development may be divided into the periods: up to 1964, from 1964 to 1974, from 1975 to 1982, from 1983 to 1992, from 1993 to 2001, 2002 to 2010 and to date. In 1964, the UK Government approved the international legal framework regarding the division of the sub-seabed resources, and thereafter significant tax changes were witnessed in the periods. [↑](#footnote-ref-482)
484. The UK fiscal regime is different from Nigeria’s petroleum fiscal system, in that Nigeria operates a

     combination of the concession and PSC regimes, alongside the risk service arrangements, whilst the UK fiscal regime consists of concessions and agreements which apply to companies engaged in petroleum extraction in the UK continental shelf. [↑](#footnote-ref-483)
485. Recent developments show that this is changing as discussed in chapter 5 of the thesis. [↑](#footnote-ref-484)
486. Api.parliament.uk-The Report drew attention to the contribution of the United Kingdom industry to

     meeting the requirements of companies operating on the United Kingdom continental Shelf, and the concern at the governments’ failure to adequately respond to the international management and engineering groups report or to appreciate the environmental impact of the North Sea oil; and requests the publication of a White Paper on all aspects of the subject. [↑](#footnote-ref-485)
487. HRMC Oil Taxation Manual -OT00150 - The taxation of the UK oil industry: an overview: Oil Taxation

     Act 1975. [↑](#footnote-ref-486)
488. Hansard, parliament.uk, Vol 876. This White Paper contains the Government’s proposals for achieving the

     oil and gas policy objectives of full UK ownership of the resources, maximum benefits of exploiting the resources is conferred on the community, and particularly Scotland and the regions, as well as propose additional taxes, and with respect to licences, grant majority participation to the State, invite the companies to enter into discussions with government about majority State participation in existing licences for commercial fields, and the setting up of a British national oil corporation etc. [↑](#footnote-ref-487)
489. By the mid-1980s there were over one hundred installations. Through extraordinary technological

     innovation and human effort and sacrifice, millions of barrels were being produced every day. For the oil

     and gas producers, there were great profits to be made. British self-sufficiency in oil and gas, hitherto an impossible dream, was becoming a possibility. Indeed, as exploration and investment moved further North, it became clear that there was oil to be found in great quantities. A brief history of the UK North sea oil and gas industry < https://www.abdn.ac.uk> [↑](#footnote-ref-488)
490. Budget 2014, HC 1104, March 2014 para 1.114. [↑](#footnote-ref-489)
491. HM Treasury, Review of the oil and gas fiscal regime: call for evidence, (PDF) July 2014 p 6. P12-14. [↑](#footnote-ref-490)
492. This is the tax the government imposes on fuel each year, which generates tens of billions for the Treasury.

     Roughly 60% of the price we pay at the pumps is tax, or 59p in duty on unleaded, plus 20% VAT taking it to 73p. Fuel duty has been raised above the rate of inflation over the past 20 years by successive governments via the fuel duty escalator. [↑](#footnote-ref-491)
493. HM Treasury press notice, Radical reforms for oil and gas industry, 4 December 2014. See also, “Analysis:

     oil and gas fiscal regime – the plan for reform”, Tax Journal, 12 December 2014. [↑](#footnote-ref-492)
494. HM Treasury: Driving Investment: a plan to reform the oil and gas fiscal regime, December 2014 pp15-16. [↑](#footnote-ref-493)
495. The government announced a package of measures on oil and gas taxation to support investment. This

     package includes the introduction of legislation in 2013 giving the government statutory authority to sign contracts with companies operating in the UK and UK Continental Shelf (UKCS), to provide assurance on the tax relief they will receive when decommissioning assets. These Deeds will provide companies and investors with the certainty they need so they take account of decommissioning liabilities on a post-tax basis. HM Treasury, (2012). Also, see study titled Decommissioning Relief Deeds and their impact on the UK oil and gas industry, by Arleta Osmann, University of Aberdeen. [abdn.ac.uk/business/documents/osmann.pdf](https://www.abdn.ac.uk/business/documents/osmann.pdf). (2013 Finance Act dealing with the problem of uncertainty on tax relief for decommissioning expenditure) [↑](#footnote-ref-494)
496. Field allowances were introduced in 2009 to provide an incentive for development of commercially marginal oil and gas fields. The field allowance reduces the amount of adjusted ring fence profits on which SCT is charged. The allowance is mandatory, and no claim is required. Deloitte – Oil and Gas taxation in the UK. <https://www2deloitte.com> [↑](#footnote-ref-495)
497. There is however a case for making changes to the current field allowance model. Commentators have

     stated that, although the oil industry is used to dealing with uncertainty in the policy environment, in price and in the political environment, it still likes certainty where possible. Source: commonslibrary.parliament.uk [↑](#footnote-ref-496)
498. Finance Act 2015. [↑](#footnote-ref-497)
499. Finance Act 2015- Budget 2015, HC 1093, March 2015 p85, p64 (Table 2.1 – items 11 & 12). See also,

     HMRC, Corporation tax: oil and gas companies: investment allowance and reduction in supplementary charge – tax information note, 18 March 2015. [↑](#footnote-ref-498)
500. While no company will ever pay Petroleum Revenue Tax again, the tax will not be abolished in legislation.

     This is to ensure that companies which decommission fields that have paid Petroleum Revenue Tax will be able to benefit from the decommissioning relief to which they are entitled. [↑](#footnote-ref-499)
501. For PRT charged on profits that operators make on fields that were commissioned before 1993, in March

     2016, the government reduced PRT from 50% to 0%, effective January that year. Operators can offset allowable expenditure, including decommissioning costs, against profits made from the field being decommissioned chargeable to PRT in any previous year. [↑](#footnote-ref-500)
502. Budget 2016, HC 901, (PDF) March 2016 p.54. See also, HMRC, Oil and gas taxation: reduction in

     Petroleum Revenue Tax and supplementary charge, 16 March 2016. [↑](#footnote-ref-501)
503. NAO, oil and gas in the UK: offshore decommissioning, HC 1870, 25 January 2019 pp.25-26. For more

     details see, HMRC, Oil and gas taxation: transferable tax history and retention of decommissioning expenditure, 31 October 2018. [↑](#footnote-ref-502)
504. The two types of reliefs for decommissioning costs introduced to achieve more certainty in UK petroleum

     tax system are Ring Fence Corporation Tax (RFCT) and Supplementary Charge (SC). Oil and gas operators therefore pay a modified corporation tax consisting of ring-fenced corporation tax at 30% of profits, with a supplementary charge of 10%. Operators can use decommissioning costs to offset corporation tax paid since 2002. [↑](#footnote-ref-503)
505. HM Treasury, Energy Profits Levy Factsheet, 26 May 2022. [↑](#footnote-ref-504)
506. Matthew Ray, Oil and Gas Fiscal Review, HM Treasury, 1 Horse Guards Road. London, see also Hafez

     Abdo, Taxation of UK Oil and Gas Production: A Non-Proprietorial Regime? LAP - Lambert Academic Publishing, pp.53-54. [↑](#footnote-ref-505)
507. From the introduction of the first duty (royalty) on UK petroleum production, up until 2010, four special

     taxes were used beside the standard ring-fenced Corporation Tax (RFCT). These taxes are PRT, Supplementary Petroleum Duty (SPD), Advance Petroleum Revenue Tax (APRT) and the Supplementary Charge (SC). [↑](#footnote-ref-506)
508. The Finance Act 1993 (FA93) for all fields given development consent on or after 16 March 1993. [↑](#footnote-ref-507)
509. CTA10\S304(1) The usual reliefs for trading losses are available to petroliferous companies but there are

     certain restrictions because of the ring fence. These restrictions ensure that non-ring fence losses are not allowed against ring fence profits. Additionally, from 1 April 2017, the quantum of the relief for carried forward losses is restricted in some circumstances ([CTM04800](https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm04800)). [↑](#footnote-ref-508)
510. The aim of CTA10\S286 is to allow a deduction for interest against ring fence profits only if the money

     borrowed is used to meet expenditure incurred in carrying on oil extraction activities or in acquiring oil rights other than from a connected person or is appropriated to meet such expenditure. These restrictions apply whether the borrowing is from an associate or not. The section is applicable only to a company with ring fence profits. [↑](#footnote-ref-509)
511. OT21200 - Corporation tax ring fence: the supplementary charge: With effect from 17 April 2002, Finance

     Act 2002 introduced a supplementary charge on companies producing oil or gas in the UK or on the UK Continental Shelf. This is levied on their ring fence profits with no deduction for financing costs. The rate set in FA 2002 was 10%, it was then increased to 20% in FA 2006 and to 32% in FA 2011. The rate was reduced to 20% in FA 2015 and to 10% in FA 2016. FA 2002 also introduced special 100% first-year capital allowances from 17 April 2002 in the ring fence in plant and machinery (24% for long-life assets) and mineral exploration and access. [↑](#footnote-ref-510)
512. Royalty was payable on a license basis in exchange for the right, granted under license, to extract oil and

     gas belonging to the Crown. It applied to onshore licenses from 1934 and was extended to offshore license’s when they were first issued in 1964. [↑](#footnote-ref-511)
513. The review of the PPTA, the PA, Gas development, the JV/PSC fiscal systems, and timely amendment to

     relevant Acts was long delayed, unstructured, and ad hoc, at best. [↑](#footnote-ref-512)
514. [UK Parliament](https://www.parliament.uk/) - Lords Hansard is a transcript of everything that is said in the Lords Chamber. There is a

     separate House of Commons Hansard. https://www.parliament.uk [↑](#footnote-ref-513)
515. A Guide to the Legislative Process in the UK -https://publications.parliament.uk. [↑](#footnote-ref-514)
516. This system compares, for example, to the US system which has a parallel system of processing bills. In

     the US, a separate bill must be introduced into both the House of Representatives and the Senate before they are eventually amalgamated. [↑](#footnote-ref-515)
517. The Government published details of a revised annual Budget timetable for policy announcements,

     consultations, and the passage of legislation (HM Treasury, [The new Budget timetable and the tax policy making process](https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process), 6 December 2017). At [Autumn Statement 2016](https://www.gov.uk/government/topical-events/autumn-statement-2016) the Chancellor announced that in future he would hold a single fiscal event each year: a Budget to be held in the autumn. [Autumn Budget 2017](https://www.gov.uk/government/topical-events/autumn-budget-2017) is the first Budget in this new cycle. [↑](#footnote-ref-516)
518. See chapter 5 of this Thesis. [↑](#footnote-ref-517)
519. Section 58(3), 1999 Nigerian Constitution. Also, under s.58(5) The legislature can override a veto by the

     executive arm.  [↑](#footnote-ref-518)
520. The Petroleum (Production) Act 1918 was enacted to confer on the Crown the right to control exploration

     and production in the UK and to grant licenses for that purpose. Source: HRMC Oil Taxation Manual. [↑](#footnote-ref-519)
521. Review of the oil and gas fiscal regime: call for evidenc**e,** UK.Gov:,https://www.gov.uk, updated Dec.2014 [↑](#footnote-ref-520)
522. PRT was abolished on 16 March 1993 for all fields given development consent on or after that date, but

     continues in existence for fields established before that date. Chancellor George Osborne has “effectively abolished” the Petroleum Revenue Tax in a bid to help the North Sea oil and gas industries in March 2016. [↑](#footnote-ref-521)
523. Hafez Abdo, Readings in the International Oil and Gas Agreements and the Economic Rent Concept: The

     Governance of Petroleum Resources, Vol. 9, Issue 3 International Energy Journal 163-173 (September 2008); D. P. Cameron, Property Rights and Sovereign Rights: The Case of North Sea Oil, New York, Academic Press Inc. (1983); HMRC, A Guide to UK and UK Continental Shelf, available at http://www.hmrc.gov.uk/international/ns-fiscal3.htm (2010). (Accessed 13th June 2023) [↑](#footnote-ref-522)
524. The Office of Tax Simplification (OTS) is the independent adviser to the government on simplifying the

     UK tax system. The OTS was set up on 20 July 2010 and made a permanent independent Office of HM Treasury on 21 July 2015.As the Office of Tax Simplification is a statutory body, the formal closure took effect when the Spring Finance Bill 2023 received Royal Assent. [↑](#footnote-ref-523)
525. HM Treasury Oil and Gas Fiscal Review Outcome ; 0fficial documents - GOV.UK (www.gov.uk).(Nov.

     2023). [↑](#footnote-ref-524)
526. The Oil & Gas Authority (OGA) is now responsible for issuing licences through competitive licensing rounds

     that generally take place every year. The OGA's policy objective in a licensing round is to maximise the economic recovery of the UK's oil and gas reserves. [↑](#footnote-ref-525)
527. The US Court held thatPetroleum revenue tax paid by petitioners to the United Kingdom was not paid

     in exchange for specific economic benefits and constitutes a creditable foreign tax under sec. 901, I.R.C. [↑](#footnote-ref-526)
528. The Ring Fence Tax was enacted under the U.K.'s sovereign taxing power, and constitutes a tax on income,

     structured as a corporate income tax. It was therefore creditable tax in the US. [↑](#footnote-ref-527)
529. There are around 100 such fields still producing in the UKCS, of which the majority (around 60) have never

     been profitable enough to pay PRT. In Finance Act 2008, the government legislated to give HMRC the power to remove fields that are unlikely ever to pay PRT from the PRT regime if all companies party to the license in any such field so elect. [↑](#footnote-ref-528)
530. The UKCS therefore potentially fall within two distinct fiscal regimes: Petroleum Revenue Tax (PRT) and

     Ring Fence Corporation Tax (CT) which also incorporates a Supplementary Charge (SC). [↑](#footnote-ref-529)
531. Ring Fence Corporation Tax (RFCT) – This is calculated in the same way as the mainstream corporation tax

     applicable to all companies but with the addition of a "ring fence". The current rate of RFCT on ring fenced profit is 30%. The ring fence prevents taxable profits from oil and gas extraction in the UK and UKCS from being reduced by losses from other activities or by excessive interest payments. Supplementary Charge (SC) This is an additional charge, currently set at a rate of 32%, on a company's ring fence profits (but with no deduction for finance costs). With the zero rating of Petroleum Revenue Tax (PRT) for all new fields, effective January 2016, its relevance is reduced. [↑](#footnote-ref-530)
532. The overall structure of the UK Petroleum Tax, Royalty charge and Corporation Tax regimes is such that

     with the Royalty charge, the PRT and the CT, an operative ring fence arrangement as instituted delivers a marginal tax rate on PRT paying fields which is now 81% on income from PRT-paying fields and 62% for other fields.The system produces a degree of certainty for both the Government in terms of revenue returns, and to the operators, in terms of clarity of framework and return on investments. [↑](#footnote-ref-531)
533. With effect from June 30th, 1993, PRT was abolished for oil fields which received development consent on

     or after 16th March 1993. Also, effective June 30th, 1993, the PRT rate was reduced from 75 to 50 percent for paying oil fields which had obtained development consent before 16th March 1993 and all PRT allowances (Oil allowance, Cross-Field exploration & Appraisal allowance, Cross-Field Development allowance) were removed. Further, effective 1 January 2016, RT was zero rated. [↑](#footnote-ref-532)
534. Nigeria Deep Offshore and Inland Basin Production Sharing Contract Act, 1993. [↑](#footnote-ref-533)
535. A fiscal stimulus may refer to either greater public spending or tax cuts. In both cases, the government

     wants to boost economic growth. In most cases, government bailout packages are also types of fiscal stimulus, whereas fiscal rules are restrictions on fiscal policy set by a government to constrain its own decisions on spending and taxes. For example, they might require that the deficit stays below a certain level. The first fiscal rules in the UK were adopted by the New Labour government in 1997. Those rules applied for over a decade, but since then the UK’s rules have changed more regularly.  [↑](#footnote-ref-534)
536. Since 1990 almost all OECD countries have adopted some sort of fiscal rule. International Monetary Fund,

     Fiscal Rules Dataset 1985 -2021, [www.imf.org/external/datamapper/fiscalrules/map/map.htm](http://www.imf.org/external/datamapper/fiscalrules/map/map.htm" \t "_blank) [↑](#footnote-ref-535)
537. Ring Fence Expenditure Supplement (RFES) The RFES adds an annual supplement to the value of unused

     expenditure carried forward from one period to another to maintain the time value of exploration, appraisal and development costs. [↑](#footnote-ref-536)
538. Treasury announced the annual uplift of 6 -10 % for the period 2010 – 2015. [↑](#footnote-ref-537)
539. General provisions: CTA2010\S330 and S331 onwards. [↑](#footnote-ref-538)
540. The review of the entire process in Nigeria leading to the PIA, and the PIA terms will be assessed in

     chapter 9 of this Thesis to see to what extent the above highlighted issues and objectives may have been achieved or addressed. [↑](#footnote-ref-539)
541. (2021) EWHC 128. [↑](#footnote-ref-540)
542. In determining whether the pre-existing s 29 notices were applicable to Additional Wells, the definition of

     "Offshore installation" was relevant. s 44(1) defines "offshore installation" as "any installation which is or has been maintained or is intended to be established for the carrying on of any activity" falling within s.44(2) and (3). Further, s. 44 (5) defines "installation" as that which includes any "floating structure or devices maintained on a station by whatever means". Agreeing with Apache's construction, the High Court held that “offshore installation” would naturally refer to equipment or structures within the field or sub-field such as a rig, instead of the entire field. This was especially so considering the definition of "installation" as including a floating structure or device on a station. The High Court also recognized that the s29 notices were dated between 2000 and 2005, long before the SPA was executed in 2011 and many years before the construction and existence of the additional wells. There was also no suggestion of an intention to construct the additional wells at the time of the notices. Therefore, these additional wells did not fall within the limits of s44. Accordingly, the Secretary of State would not have the power to apply one of the pre-existing s29 notices to the additional wells and no security was required for them. [↑](#footnote-ref-541)
543. The need to consider the scope of the Act was necessitated by the contractual indemnity. While in this

     matter a clear result was achieved, it may not have been the case had the regulations been less clear, Apache might have found itself having to provide much wider security than anticipated. [↑](#footnote-ref-542)
544. The 7th & 8th NA failed to enact the PIB into law. [↑](#footnote-ref-543)
545. Right from the onset with the enactment of the Oil Taxation Act of 1975, which introduced the PRT, there

     is continuous review and updating of all relevant legislation. [↑](#footnote-ref-544)
546. Capital Allowance Act (CAA) 2001, the Investment Tax Allowances (ITA) applicable to various classes of

     assets (ITEPA.2003, ITTOIA 2005, ITA 2007), and the CT and the SC interaction (CTA 2009, CTA 2010 and TIOPA 2010). [↑](#footnote-ref-545)
547. Elizabeth Bast, Alex Doukas, Sam Pickard, Laurie van der Burg, Shelagh Whitley, (November 2015).

     "Empty promises: G20 subsidies to oil, gas and coal production" (PDF). Overseas Development Institute (ODI). p. 103. Retrieved 19 July 2020. [↑](#footnote-ref-546)
548. Elmira Ali Akbari, Contributing Editor: Assessing Canada’s Energy Sector Competitiveness, Fraser

     publishing, July 2019, [Canadian Energy News Network - Facts and Information Centre](https://www.canadianenergynewsnetwork.com/). [↑](#footnote-ref-547)
549. Oil Museum of Canada, oilmuseum.ca. [↑](#footnote-ref-548)
550. ["Six Historical Events in the First 100 Years of Canada's Petroleum Industry"](http://www.petroleumhistory.ca/history/wells.html)*. Petroleum Historical*

     *Society of Canada. 2009. https://www.eia.gov/international/analysis/country/CAN.* [↑](#footnote-ref-549)
551. ["Estimated Production of Canadian Crude Oil and Equivalent](https://www.neb-one.gc.ca/nrg/sttstc/crdlndptrlmprdct/stt/stmtdprdctn-eng.html)*["](https://www.neb-one.gc.ca/nrg/sttstc/crdlndptrlmprdct/stt/stmtdprdctn-eng.html)*, Source: National Energy Board (2015) &

     Natural Resources Canada. [↑](#footnote-ref-550)
552. Canada is by far the largest single source of oil imports to the United States, providing 43% of US crude oil

     imports in 2015*. [Canadian Energy Markets | Oil and Gas Imports and Exports (capp.ca)](https://www.capp.ca/energy/markets/).* [↑](#footnote-ref-551)
553. U.S. Imports by Country of Origin-ttps://www.eia.gov/dnav/pet/pet\_move\_impcus\_d\_NUS\_Z00\_mbbl\_m. [↑](#footnote-ref-552)
554. “[Legal and Policy Frameworks - Canada"](http://webarchive.bac-lac.gc.ca:8080/wayback/20061104144834/http:/www2.nrcan.gc.ca/es/es/NA-enrgpic2006/p07can-e.htm). *North America: The Energy Picture*. Natural Resources Canada.

     January 2006. Archived from [the original](http://www2.nrcan.gc.ca/es/es/NA-enrgpic2006/p07can-e.htm) on 4 November 2006. Retrieved 16 August 2008. [↑](#footnote-ref-553)
555. NNPC has now been incorporated into a limited liability company and will be run as a private commercial

     entity engaged in petroleum operations under the PIA. [↑](#footnote-ref-554)
556. Michal C. Moore, (October 2015). [An Energy Strategy for Canada](https://d3n8a8pro7vhmx.cloudfront.net/cdfai/pages/657/attachments/original/1443836558/An_Energy_Strategy_for_Canada.pdf?1443836558) (PDF). Canadian Global Affairs

     Institute*(CGAI)* (Report). Calgary, Alberta. p. 27. [ISBN](https://en.wikipedia.org/wiki/ISBN_(identifier)" \o "ISBN (identifier)) [978-1-927573-49-5](https://en.wikipedia.org/wiki/Special:BookSources/978-1-927573-49-5" \o "Special:BookSources/978-1-927573-49-5). Retrieved 20 July 2020. [↑](#footnote-ref-555)
557. Monica Gattinger, G. Bruce Doern (2003 publication), *Power Switch: Energy Regulatory Governance in the*

     *21st Century*. See also, Monica Gattinger, (June 2013). *A National Energy Strategy for Canada: Golden Age or Golden Cage of Energy Federalism?* 2013 Annual Conference of the Canadian Political Science Association. Victoria, BC. [↑](#footnote-ref-556)
558. Ibid -Michal C. Moore, op. cit, p.27: Section 92A of *the [Constitution Act, 1867](https://en.wikipedia.org/wiki/Constitution_Act,_1867" \o "Constitution Act, 1867)* assigned to the provincial

     governments the exclusive authority to make laws in relation to non-renewable resources and electrical energy, while Section 125 prevented the CG from taxing any provincial government lands or property. Since 1867, the rules of Canadian federalism ensure that "individual provinces own, market and control energy exports" of energy resources contained within their own provincial borders. [↑](#footnote-ref-557)
559. The CG has the power to make treaties with foreign countries. This has important implications for treaties

     involving energy production, like the *[Kyoto Protocol](https://en.wikipedia.org/wiki/Kyoto_Protocol" \o "Kyoto Protocol)*, signed in 2002. The CG, however requires the cooperation of the provincial governments to enforce Treaties. [↑](#footnote-ref-558)
560. Camille Fertel, (2013). "Canadian energy and climate policies: A SWOT analysis in search of

     federal/provincial coherence". *Energy Policy*. 63: 1139–1150. [↑](#footnote-ref-559)
561. Source: Energy.ca. See also; MakingEnergyPolicy\_Canada.pdf (jenniferwinter.github.io [↑](#footnote-ref-560)
562. Laverty, Gene (20 July 2015). "Canada's Provincial leaders reach agreement on energy strategy". *SNL*

     *Energy Power Daily*: 1–3. [↑](#footnote-ref-561)
563. Ibid - Michal C. Moore, op. cit, p.27. In 2015, the CG worked with Canada's provincial leaders and reached

     an agreement for cooperation in boosting the nation's industry while transitioning to a low-carbon economy. [↑](#footnote-ref-562)
564. Brian Arnold, The Process of Making Tax Policy: An International Comparison- Proceedings of a Round

     Table on the Tax Policy Process, June 2016 (Canada Tax Foundation). The other sources of policy initiatives in Canada include:

     non-elected officials (either individually or by way of recommendations of a parliamentary committee); by virtue of 1 Constitution Act, 1867, 30 & 31 Vict. c. 3, section 92. the process for making tax policy in Canada.

     submissions from individual taxpayers, tax advisers, industry groups, and tax practitioner groups (for example, the Joint Committee on Taxation of the Canadian Bar Association and the Chartered Professional Accountants of Canada [“the CBA-CPA joint committee”] and the Tax Executives Institute);

     expert panels appointed by government (for example, the Expert Panel on Financial Security for Children with Severe Disabilities and the Independent Panel on Federal Support to Research and Development);

     studies and research by private groups (for example, the C.D. Howe Institute and the Canadian Tax Foundation).

     international bodies (such as the Organisation for Economic Co-operation and Development [OECD] and the G8/G20); and

     academic research and advisers from the academic community. [↑](#footnote-ref-563)
565. The Department of Finance staff have access to this database for research and analytical purposes. It is a

     major source of information for the quantitative portion of the TPB’s policy analysis and allows TPB staff to model the projected outcomes of policy proposals, which in turn get imputed into tax legislation. [↑](#footnote-ref-564)
566. www.canada.ca/en/department-finance/services/publications/federal-budget.html [↑](#footnote-ref-565)
567. [Canada.ca](https://www.canada.ca/en.html) [↑](#footnote-ref-566)
568. Government of Canada, Department of Finance – Introduction to the Tax Policy Branch. [↑](#footnote-ref-567)
569. In 1945, Canada's federal government committed itself to use fiscal policy "to maintain a high and stable,

     level of employment and income" by setting its budgetary position as the business cycle required, Source: <https://www.thecanadianencyclopedia.ca/en/article/fiscal-policy> [↑](#footnote-ref-568)
570. Canada 2022-Energy Policy review: Source: IEA- International Energy Agency Website: www.iea.org. [↑](#footnote-ref-569)
571. Richard Eccleston and Timothy Woolley: *From Calgary to Canberra: Resource Taxation and Fiscal*

     *Federalism in Canada and Australia*, Publius, [Vol. 45, No. 2 (Spring 2015)](https://www.jstor.org/stable/i24734599), pp. 216-243, Oxford University Press. [↑](#footnote-ref-570)
572. John F. Helliwell, et al*, Oil and Gas in Canada: The Effects of Domestic Policies and World Events* (Toronto: Canadian Tax Foundation, 1988) contains a more complete description of the federal elements of the various tax systems that have been proposed or applied to oil and gas income and expenses since 1967. [↑](#footnote-ref-571)
573. Royal Commission on Taxation 1962-1966 (The Carter Commission) [↑](#footnote-ref-572)
574. The process for developing Canadian tax policy and law may be considered to include all the

     activities carried out by the Department of Finance and others before the announcement of a legislative change and the introduction of a bill in the House of Commons, Source:<https://cffp.recherche.usherbrooke.ca.> [↑](#footnote-ref-573)
575. John F. Helliwell, Mary E. MacGregor, Robert N. McRae & Andrd Plourde, Oil and Gas Taxation, Osgoode

     Hall Law Journal, Vol 26 No. 3, 1988. [↑](#footnote-ref-574)
576. Royal Commission on Taxation, *The Taxation of Mineral Extraction,* by M.W. Bucovetsky, Study

     No. 8 (Ottawa: Queen's Printer, 1967). [↑](#footnote-ref-575)
577. Royal Commission on Taxation, *Report,* vol. 4 (Ottawa: Queen's Printer, 1966) (Chair *K.* Lem.

     Carter) at 309. [↑](#footnote-ref-576)
578. Ibid at 327. [↑](#footnote-ref-577)
579. Royal Commission on Taxation (Ottawa: Queen’s Printer and Controller of Stationery, 1967). The Report

     is issued in six (6) volumes. The review Article by Harvey E. Brazer, (published in *The Journal of Finance*

     *,1967),* highlighted the need for equity to prevail where the broad objectives of horizontal and vertical equity conflict. [↑](#footnote-ref-578)
580. Bill C-259, An Act to amend the Income Tax Act 3d Sess., 28th Part, 1970-71. [↑](#footnote-ref-579)
581. The Benson White Paper states "the Government of Canada places before Parliament, the Canadian people

     and the provincial governments its major proposals for reform of the income tax structure. The government will welcome public discussion of the proposals, particularly in the parliamentary committee considering them. Detailed discussions are also planned with provincial government representatives. ..." p.5. [↑](#footnote-ref-580)
582. Hon. EJ. Benson, Minister of Finance, *Proposals for Tax**Reform* (Ottawa: Queen's Printer, 1969) at 64. [↑](#footnote-ref-581)
583. Canada, House of Commons, Standing Committee on Finance, Trade and Economic Affairs, *Eighteenth*

     *Report Respecting the White Paper on Tax Reform* (Ottawa: Queen's Printer, 1970) at 74. [↑](#footnote-ref-582)
584. The major exceptions involve the treatment of offshore exploration, the resource allowance to

     "compensate" for the non-deductibility of royalties, and the ability of the consortium operating the Syncrude oil sands plant to deduct royalty payments for federal income tax purposes. [↑](#footnote-ref-583)
585. Canada House of Commons Procedure and Practice, Third Edition, 2017, Chapter 18 Financial Procedures

     of House of Commons, Edited by Marc Bosc and André Gagnon, supra s 53. [↑](#footnote-ref-584)
586. Standing Order [80 (1)](https://www.ourcommons.ca/procedure/standing-orders/Index-e.html), in 1968, the House agreed to abolish the Committee of Ways and Means, and to do

     away with the Committee’s role in considering resolutions to authorize any withdrawals from the Consolidated Revenue Fund following the adoption of supply, and to eliminate the repetitive process of debating budget proposals initially on the motion to resolve into the Committee of Ways and Means. The Ways and Means bills, however, continued to be considered in a Committee of the Whole until 1985. [↑](#footnote-ref-585)
587. The CG and each of the 10 PG and 3 Territorial governments develop and enact their tax legislation in

     Canada. The CG and PG’s do so under the constitutional authority conferred by the Constitution, whilst the territorial governments do so under power delegated by the CG. [↑](#footnote-ref-586)
588. The Royal Commission on Energy (1957–1959) − the Borden Commission, and in 1961, through to the

     Adoption of the National Oil Policy (NOP) and the NEB accepting Mr. Levy's recommendations, which formed the cornerstone of Canada's energy policy, until the NOP ended in September 1973. See also Canadas Proposals for Tax Reform, 1969. (Department of Finance) [↑](#footnote-ref-587)
589. The 1980 [National Energy Program](https://en.wikipedia.org/wiki/National_Energy_Program) (NEP)- *Canadian Journal of Political Science*. 26 (1): 31–59. [↑](#footnote-ref-588)
590. Federal legislation must be passed by both chambers of Parliament (the House of Commons and the

     Senate). The House and the Senate will generally study proposed legislation in committee before passing it. Legislation becomes law upon receiving Royal Assent (received from the governor general). [↑](#footnote-ref-589)
591. The political negotiations and horse trading etc., was a major source of delay and uncertainty which

     affected the timely legislation of the Nigeria National Petroleum Industry Fiscal Policy (NPIFP) into law. Aspects of the tax policy process continue during the legislative process—for example, the review and

     refinement of draft legislation. [↑](#footnote-ref-590)
592. Canadian Petroleum Resources Act (R.S.C., 1985, c.36 (2nd Supp)). The Act authorizes the issuance by the

     Crown of title rights to explore for, develop and produce petroleum in areas under federal jurisdiction that are not covered by other legislation. [↑](#footnote-ref-591)
593. Canada Oil and Gas Operations Act (RSC, 1985, c.O-7, deals with safety, environmental protection, and

     resident benefits from exploration and production activities. [↑](#footnote-ref-592)
594. [Oil & Gas Laws and Regulations Canada 2023 - ICLG.com](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjS0IzYktyAAxVjVUEAHcoQAEoQFnoECA0QAw&url=https%3A%2F%2Ficlg.com%2Fpractice-areas%2Foil-and-gas-laws-and-regulations%2Fcanada%23%3A~%3Atext%3DFor%2520example%252C%2520in%2520the%2520province%2Cheld%2520by%2520corporations%2520or%2520trusts.&usg=AOvVaw1Luw0SIqVLCt6k3gl1s5y6&opi=89978449)  [↑](#footnote-ref-593)
595. Government of Alberta, ICLG.com. [↑](#footnote-ref-594)
596. The Canadian federal and provincial governments do not seek to directly participate in the development of

     oil and natural gas reserves as there are not federally or provincially owned oil companies in Canada.  Rather, the governments lease their mineral rights to privately held and publicly listed oil and gas companies to explore for, develop and produce oil and natural gas. [↑](#footnote-ref-595)
597. Oil and gas royalties are generally subject to withholding tax at a rate of 25%, which typically is not reduced

     by applicable tax treaties, but they may be reduced by an applicable tax treaty depending on the nature of the royalty; Deloitte., https://www2.deloitte.com. [↑](#footnote-ref-596)
598. Section 20(1) (e) of the Tax Act – tax pools are undepreciated capital cost of any class of

     depreciable property, cumulative exploration expense, development expense etc. [↑](#footnote-ref-597)
599. The royalties are rental payments to the PG’s and are for the benefits received from drawing out the

     petroleum from the provincial lands, and a cost to hydrocarbon companies for using provincial public property. [↑](#footnote-ref-598)
600. Omar Mawji, Institute for Energy Economics and Financial Analysis, 2021 Study. Source:

     <[Canada’s oil and gas decommissioning liability problem | IEEFA](https://ieefa.org/resources/canadas-oil-and-gas-decommissioning-liability-problem)> accessed December 2024. [↑](#footnote-ref-599)
601. Ibid. Omar Mawji, Decommissioning liabilities are a major concern for the province of Alberta, which is

     burdened with more than 80 percent of AROs in Canada. More than 70 percent of the 459,000 wells in the province require closure work. The full extent of the decommissioning liabilities problem may not be fully known, given the lack of transparency, and reporting of AROs by oil and gas companies. IEEFA conducted in-depth analysis of five of the 10 most vulnerable publicly listed small-cap oil and gas producers in Canada. [↑](#footnote-ref-600)
602. Ibid -John F. Helliwell, et al *Oil and Gas Taxation,* Osgoode Hall Law journal, vol. 26, No 3. [↑](#footnote-ref-601)
603. A Guide to Oil and Gas Taxation in Canada-KPMG, (2015 kpmg.ca/energytax). For tax purposes, there is

     little distinction between a province and territory. [↑](#footnote-ref-602)
604. KPMG, op.cit. [↑](#footnote-ref-603)
605. The 2017 US Tax Reform Legislation (Public Law [P.L] No. 115-97) business and individual tax rates, and

     expanding expensing for business while curtailing some of the major expenditures. The Law modernized US international tax rules and provided the most significant overhaul in more than 30 years: source PWC Worldwide Tax Summaries. [↑](#footnote-ref-604)
606. Tax Matters - A Snapshot of Canada’s Competitiveness. A Report prepared by PWC for the Canadian

     Chamber of Commerce. https//chamber.ca.2022/01. Internationally, Canada is less tax competitive compared to Australia (−24.7%) with its unusually generous treatment of exploration costs, but much more tax competitive than Brazil (66.5%) with its various tax and resource levies impinging on investment. [↑](#footnote-ref-605)
607. [1978] 2 S.C.R. 545 [↑](#footnote-ref-606)
608. The statutes and regulations in question were: (1) *The Oil and Gas Conservation, Stabilization and*

     *Development Act,*1973-74 (Sask.), c. 72 (Bill 42); (2) *An Act to amend The Oil and Gas Conservation, Stabilization and Development Act,*1973-74 (Sask.), c. 73 (Bill 128); (3) *An Act to amend The Mineral Resources Act,*1973-74 (Sask.), c. 64 (Bill 127); (4) Amendments to The Petroleum and Natural Gas Regulations, 1969, under *The Mineral Resources Act,*as enacted by (a) Order in Council 95/74 (b) Order in Council 1238/74. [↑](#footnote-ref-607)
609. 2019 BCCA 181, 25 B.C.L.R. (6th) 1, 25 C.E.L.R. (4th) 1, The BC government proposed changes to the

     Environmental Management Act (the EMA) in April of 2018. The changes would have prohibited the possession, charge, or control of heavy oil in BC without a provincial permit. Premier Horgan referred the matter to the BCCA in response to political controversy and concerns over the constitutionality of the proposed amendments. [↑](#footnote-ref-608)
610. Environmental Management Act (British Columbia). [↑](#footnote-ref-609)
611. The Trans Mountain Expansion (TMX) project approval will help make sure Canada gets full value for its

     Oil. [↑](#footnote-ref-610)
612. *Tsleil-Waututh Nation v Canada (Attorney General),*2018 FCA 153. [↑](#footnote-ref-611)
613. *Coldwater Indian Band et al v Attorney General of Canada*, 2020 FCA 34 [Coldwater]. [↑](#footnote-ref-612)
614. Brian Ernewein and Nancy Horsman, The Process for Making Tax Policy in Canada; Canadian tax journal /

     revue fiscale Canadienne (2013) 61:4, 1031 - 42. [↑](#footnote-ref-613)
615. The tax system should not unduly impede or reduce the economy's productive capacity; Transparency and visibility; Taxpayers should know that a tax exists and how and when it is imposed upon them and others; whilst the structuring of tax laws should aim to minimize noncompliance. Accountability to taxpayers is key as well as accessibility and visibility of information on tax laws and their development, modification, and purpose are necessary for taxpayers. [↑](#footnote-ref-614)
616. Overview of the Petroleum Industry Bill, (Sept. 2012) https://www.lexology.com/contributors/Hogan-

     Lovells: Legal Influencer. [↑](#footnote-ref-615)
617. PIA received presidential consent and was enacted in August 2021. [↑](#footnote-ref-616)
618. S. 258 of the PIA [↑](#footnote-ref-617)
619. S. 5(1) of the PIA - A host community shall be any of the following: a community situated within the area of

     operation. Provided that a geographical area of community is partly inside and partly outside the area of operation, the entire community shall be considered a host community. [↑](#footnote-ref-618)
620. The PIA, 2021 contains 5 Chapters, 319 Sections and 8 Schedules. It deals with new royalty, tax and

     regulatory and licensing regimes, as well as with rights of preemption; Incorporated Joint Ventures; Domestic Base Price and Pricing Framework; Pricing Formula for Gas Price for the Gas Based Industries; Capital Allowances; Production Allowances and Cost Price Ratio Limit; petroleum fees, rents, and related matters. [↑](#footnote-ref-619)
621. Joshua D. Blank, and Osofsky, Leigh, Simplicity Lost (August 26, 2022). Pittsburgh Tax Review, 2023, UC

     Irvine School of Law Research Paper No. 2022-29, UNC Legal Studies Research Paper No. 4201658, Available at SSRN: [https://ssrn.com/abstract=4201658](https://ssrn.com/abstract=4201658" \t "_blank) [↑](#footnote-ref-620)
622. Pouga Tinhaga, Zachee, Tax Complexity: A Sine Qua Non for Tax Fairness (May 2013). Available at

     SSRN: [https://ssrn.com/abstract=2588661](https://ssrn.com/abstract=2588661" \t "_blank) or [http://dx.doi.org/10.2139/ssrn.2588661](https://dx.doi.org/10.2139/ssrn.2588661" \t "_blank), [↑](#footnote-ref-621)
623. Currently, it contributes 80% of the revenues of the Federal Government of Nigeria (FGN), accounts for

     around 90% of foreign exchange receipts but only contributes less than 10% to gross domestic product, largely because only a small part of the oil and gas value chain is domesticated. [↑](#footnote-ref-622)
624. These uncertainties in tax and fiscal policy and tax legislation and regulations are examined in chapters 2, 3,

     4, 5 & 6 of the thesis. [↑](#footnote-ref-623)
625. See chapters 2,3,4,5 & 6 of this Thesis. [↑](#footnote-ref-624)
626. Section 1 PIA, states that the entire ownership and control of all petroleum in, under or upon any lands to

     which this section apply shall be vested in the State. This is in line with section 44(3) of the Nigerian Federal Constitution which vests the ownership, management, and control of petroleum within Nigeria and its territorial waters, Continental shelf, and Exclusive Economic Zone in the Federal Government of Nigeria (FGN). [↑](#footnote-ref-625)
627. Item 39 of the Second Schedule to the 1999 Constitution. [↑](#footnote-ref-626)
628. The Exclusive Legislative List is a list of items that only the Federal government can legislate on

     under the 1999 Nigerian Constitution [↑](#footnote-ref-627)
629. Item 59 of the Second Schedule of the exclusive list -FG has exclusive right for the taxation of incomes,

     profits and capital gains, except as otherwise prescribed by this Constitution. [↑](#footnote-ref-628)
630. The Arbitration and Conciliation Act of Nigeria is the principal law for arbitration proceedings in Nigeria.

     Nigeria ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958 and it came into force 7 June 1959). On 17 March 1970, Nigeria adopted it into the Second Schedule of the Arbitration and Conciliation Act of Nigeria. Also, Nigeria is a signatory to the International Centre for Settlement of Investment Disputes (ICSID) Convention (October 14, 1966) and has adopted the Convention into an Act as the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, 2004 which provide that the “award of I.C.S.I. disputes should have effect as awards in final judgement of Supreme Court”. [↑](#footnote-ref-629)
631. Section 7(1) (2) & 7(3) of the Conversion and Renewal (Oil Prospecting Licences & Oil Mining Leases)

     Regulations (2022). [↑](#footnote-ref-630)
632. Parties to renegotiated PSC shall not be entitled to conversion under these regulations, since such parties

     have agreed to maintain the royalty and taxation provisions under section 311(9) until the renewal of their contracts pursuant to section 303(1) of the PIA. [↑](#footnote-ref-631)
633. Sections 92 & 93 of the PIA- all conversion contracts are to be concluded at the earlier of 18 months from

     the date of passage of the Act (effective date) or the expiration date of the OML or OPL. [↑](#footnote-ref-632)
634. All outstanding arbitration or court cases relating to the OPL/ OML will be discontinued, and the

     stabilisation or guarantees provided by the NNPC in respect of such OPL or OML will become null and void. [↑](#footnote-ref-633)
635. All existing companies that convert their existing licenses are to file their first set of returns 18 months from

     the date of commencement of the Act, which is August 16th, 2021. [↑](#footnote-ref-634)
636. Section 3 PIA specifically empowers the Minister to formulate, monitor, and administer the FG’s policy over

     the petroleum industry. The Commission and Authority are required to report to the Minister, ensuring total oversight powers over the industry are total. [↑](#footnote-ref-635)
637. Ss 260 – 266 PIA, on charge to Hydrocarbon tax, ascertainment of crude oil revenue, adjusted, assessable,

     chargeable profits, allowable and not allowable deductions, and assessable profits and losses and chargeable profits and allowances. [↑](#footnote-ref-636)
638. The PIA introduced the hydrocarbon tax under S. 260 which shall be applicable and levied upon the profits

     of companies engaged in upstream petroleum operations in the onshore, shallow water and deep offshore, payable during each accounting period. Whilst S 267 ascertains the chargeable tax for any accounting period to be 30% of the profit from crude oil for petroleum mining leases with respect to offshore and shallow water areas and 15% of the profit from crude oil for onshore and shallow water for Petroleum Prospecting Licenses. [↑](#footnote-ref-637)
639. S. 302 PIA [↑](#footnote-ref-638)
640. Oil and/or gas transportation companies will not be allowed to engage directly in the purchase and/or

     sale of petroleum crude, petroleum products or gas, and vice versa for trading companies, except through separate corporate vehicles. In the new era with a new market structure, a suitable and effective network code will be introduced, to govern open access to infrastructure facilities. [↑](#footnote-ref-639)
641. See section 262 PIA. [↑](#footnote-ref-640)
642. Section 262 provides that the crude oil revenue of a company, in any accounting period, shall be the value

     of any chargeable oil adjusted to measurement points based on proceeds of all chargeable oil sold and value of chargeable oil disposed. [↑](#footnote-ref-641)
643. Petroleum Industry bill – A Game Changer <[https://assets.kpmg/content/dam/kpmg/ ng/pdf/tax/petroleum- industry-bill-(pib)-2020-%20a-game- changer.pdf](https://assets.kpmg/content/dam/kpmg/%20%20ng/pdf/tax/petroleum-industry-bill-(pib)-2020-%20a-game-%20changer.pdf), [↑](#footnote-ref-642)
644. PPT top rate of 85% and other special purpose taxes and levies [↑](#footnote-ref-643)
645. Sections 260 – 301 of the PIA. [↑](#footnote-ref-644)
646. Section 302 of the PIA. [↑](#footnote-ref-645)
647. Companies with downstream and midstream petroleum operations will only be taxable in line with the

     provisions of the CITA. See also s. 302 of the PIA. [↑](#footnote-ref-646)
648. Cap C21, Laws of the Federation of Nigeria, 2004. [↑](#footnote-ref-647)
649. S. 260 of the PIA- HT does not apply to associated natural gas, including natural gas liquids produced in

     the field and contained in the rich gas and non-associated natural gas, condensates and natural gas liquids produced from non-associated gas and associated gas and frontier acreage until reclassified. [↑](#footnote-ref-648)
650. Section 258 PIA [↑](#footnote-ref-649)
651. Section 267 of the PIA states that the chargeable tax for any accounting period of a company shall be a

     percentage of the aggregated chargeable profit for that period. For holders of petroleum mining leases with respect to offshore and shallow water areas, the chargeable tax shall be 30% of crude oil profits while for holders of petroleum prospecting licenses for onshore and shallow waters, the chargeable tax shall be 15% of crude oil profits. [↑](#footnote-ref-650)
652. Ss 263 &302, Costs that cannot be directly attributable to production of crude oil, field condensates and

     natural gas liquids from associated gas will not be allowable for deduction for HT purposes. However, such costs will qualify for deduction against company income tax (CIT). [↑](#footnote-ref-651)
653. Section 262 of PIA provides that the crude oil revenue of a company, in any accounting period, shall be

     the value of any chargeable oil adjusted to measurement points based on proceeds of all chargeable oil sold and value of chargeable oil disposed. The value of chargeable oil disposed shall be based on the aggregate value of crude oil determined for royalties for all fields. Therefore, extraction, storage and transportation costs will no longer be added in determining taxable revenue under the new tax regime, as was the case under the PPT regime. [↑](#footnote-ref-652)
654. Section 93(6) & (7) PIA. [↑](#footnote-ref-653)
655. Section 260(3) of the PIA. [↑](#footnote-ref-654)
656. Section 240 of the PIA [↑](#footnote-ref-655)
657. Section 9 PPTA -Ascertainment of profits, adjusted profit, assessable profits, and chargeable profits, which

     states that: “subject to any express provisions of this Act, in relation to any accounting period, the profits of that period of a company shall be taken to be the aggregate of- (a) the proceeds of sale of all chargeable oil sold by the company in that period; (b) the value of all chargeable oil disposed of by the company in that period; and (c) all income of the company of that period incidental to and arising from any one or more of its petroleum operations. (2) For the purposes of subsection (1) (b) of this section, the value of any chargeable oil so disposed of shall be taken to be the aggregate of- (a) the value of that oil as determined, for the purpose of royalty, in accordance with the provisions of any enactment applicable thereto and any financial agreement or arrangement between the Federal Government of Nigeria and the company; (b) any cost of extraction of that oil deducted in determining its value as referred to in paragraph (a) of this subsection; and (c) any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal”. [↑](#footnote-ref-656)
658. Section 3 (1) of the PSC Act - Determination of petroleum profit tax states that; “The petroleum profits

     tax payable under a production sharing contract shall be determined in accordance with the Petroleum Profits Tax Act: Provided that the petroleum profits tax applicable to the contract area as defined in the production sharing contracts shall be 50 per cent flat rate of chargeable profits for the duration of the production sharing contracts”.3 (2) “Nothing contained in this Act shall be construed as having exempted the contractors from the payment of any other taxes, duties or levies imposed by any Federal, State or Local Government, or Area Council Authority”. [↑](#footnote-ref-657)
659. See chapter 4 of this thesis. [↑](#footnote-ref-658)
660. Section 9 PPTA. [↑](#footnote-ref-659)
661. Export Parity Price is defined as a market driven pricing framework, responsive to fiscal changes and

     weighted to ensure pricing flexibility while moderating swings to protect fragile domestic industries. [↑](#footnote-ref-660)
662. Sections 8 & 9 of the PPTA as amended by the PSC Act. [↑](#footnote-ref-661)
663. PRT was abolished in the Finance Act (FA93) for all fields given development consent on or after 16March

     1993, (see OTO3500). PRT was however permanently zero-rated from 1 January 2016. PRT was permanently zero-rated rather than abolished to enable companies to continue to carry back losses, discussed in chapter 7 of the thesis. [↑](#footnote-ref-662)
664. Royalty was charged up to 31 December 2002, when it was abolished. It was levied at 12.5% of the gross

     value of oil and gas won in a particular license area, less an allowance for the costs associated with conveying, treating and initial storage of the oil and gas between the well head and the point of valuation, usually the terminal onshore. Royalty was payable on a license basis in exchange for the right, granted under license, to extract oil and gas belonging to the Crown. [↑](#footnote-ref-663)
665. SS 263, 264 & 264 of the PIA. [↑](#footnote-ref-664)
666. *Shell Petroleum Development company Nigeria Ltd v FBIR,* (1996) 8 NWLR (Pt 466) 256, and the line of

     cases examined in chapter 4 of the thesis. [↑](#footnote-ref-665)
667. Section 266(2) & 6th schedule - In the determination of the chargeable profit, the total cost shall not exceed

     the cost price ratio of the gross revenue determined at the measurement point. Also, all allowable total costs (i.e., allowable expenses under section 263 and capital allowances under the 5th schedule shall be subjected to CPR (excluding production allowances, rent, royalty & contribution to fund or scheme approved by the commission, e.g., Host Community Fund, Environmental Remediation Fund, NDDC, etc.). [↑](#footnote-ref-666)
668. Section 263 & 264 of the PIA provide the basis for allowable and non-allowable deductions. [↑](#footnote-ref-667)
669. Section 263 (d) PIA states ‘any expenditure (tangible or intangible) directly incurred in connection with the

     drilling of an exploration well and the next two appraisal wells in the same field whether the wells are

     productive or not’. [↑](#footnote-ref-668)
670. PIA Section 266 (2) – the 6th Schedule states that in the determination of the chargeable profit, the total cost

     shall not exceed the cost-price ratio. The Costs to Price Ratio (CPR) limit shall be 65% of gross revenue determined at the measurement point. [↑](#footnote-ref-669)
671. Section 302 of the PIA, see also Sixth schedule of the PIA. [↑](#footnote-ref-670)
672. The Court of Appeal CA), Lagos Division overturned the judgement of the Federal High Court (FHC) in the

     appeal between the FIRS or (“the Appellant”) and CNOOC Exploration and Production (CNOOC) and South Atlantic Petroleum Corporation (SAPETRO) or (“the Respondents”), by ruling that Investment Tax Credit (ITC) is not applicable to Production Sharing Contracts (PSCs) executed after 1 July 1998, in line with Section 4 of the Deep Offshore and Inland Basin (Production Sharing Contract) Act, Cap D3, Laws of Federation Nigeria, 2004 (DOIBPSCA or “the Act”) [↑](#footnote-ref-671)
673. Deep Offshore petroleum operations is subject to CIT. [↑](#footnote-ref-672)
674. Section 232 of the PIA. [↑](#footnote-ref-673)
675. Section 263 (e) of the PIA [↑](#footnote-ref-674)
676. The Associated Gas Fiscal Framework Agreement (AGFA) and the Non- Associated Gas Framework

     Agreement (NAGFA) of 1992/1997. [↑](#footnote-ref-675)
677. Sections 302 (7) and (8) of the PIA provide that natural gas tax be administered in accordance with the

     provision of the Company Income Tax Act.  [↑](#footnote-ref-676)
678. Nigeria has the largest proven gas reserves in Africa and the 9th largest in the world with over 200 trillion

     cubic meters of natural gas (as at 2018) and unproven reserves of 600 trillion cubic meters of natural gas. [↑](#footnote-ref-677)
679. Third Schedule to the PIA, it provides for Gas Pricing stability for the power and the commercial sector. [↑](#footnote-ref-678)
680. Deep Offshore and Inland Basin Production Sharing Contracts Decree (No.9) of 1999 (Now Cap. D3, LFN

     2004) introduced this distinction and modification. Prior to this, the sharing formula included only cost oil, tax oil and profit oil. [↑](#footnote-ref-679)
681. T.R. Stauffer and John C. Gault, "Exploration Risks and Mineral Taxation: How Fiscal Regimes Affect

     Exploration Incentives", The Energy Journal, Vol. 6, Special Tax Issue, 1985. p.132 [↑](#footnote-ref-680)
682. 2002, with some residual repayment made in 2003. [↑](#footnote-ref-681)
683. See chapters 7 & 8. Nevertheless, countries such as the US, Brazil and Nigeria still rely on Royalty as a

     form of early tax on the economic rent. [↑](#footnote-ref-682)
684. Under the PSC Act, this was a contentious issue with respect to the Deep Offshore, and non-compliance to

     the provisions of section 16 of the PSC Act on pricing and Royalty rate review. [↑](#footnote-ref-683)
685. Finance Act 2019, No1 of 2020. The new Act substitutes Section 5 of the old Act with a new section

     revising how Royalties are calculated. Under the old Act, Royalties were calculated based on the water depth of the field. This ranged from 0% to 12%. The amendment has eliminated the 0% rate. Royalties would now be calculated on a field basis, dependent on the chargeable volume of the crude and condensates produced per field. The new rates are 10% (for fields in the deep offshore (greater than 200-meter water depth) and 7.5% for Frontier and Inland Basin. [↑](#footnote-ref-684)
686. Section 306 & 7th Schedule to the PIA [↑](#footnote-ref-685)
687. S.16 PSC Act, 1999 and amended 2019. The intention of the amendment is to apply the price-based royalty

     rates in addition to the field-based royalties, as well as penalize non-compliance with the provisions of the Act. [↑](#footnote-ref-686)
688. Petroleum Royalty Regulations under Sections 304(2), 2022 [↑](#footnote-ref-687)
689. Sections 92, 93 ,94 & 303 of the PIA. [↑](#footnote-ref-688)
690. The chargeable taxes rates are as follows: Assessable at 15% of the crude oil profits for PMLs, and 15% of

     the crude oil profits for PPLs. Also, the 15% HT rate will apply for any PMLs derived from the PPLs after the effective date of the Act and for Royalty, the onshore and shallow waters marginal fields, with production less or equal to 10,000 bopd in a month, are subject to royalty at 5% for the first 5,000 bopd, and at 7.5% for the next 5,000 bopd. Royalty rate applicable to volumes above 10,000 bopd is chargeable as follows: Onshore areas 15%; Shallow water (up to 200m water depth) 12.5%; Deep offshore (greater than 200m water depth) 7.5% and Frontier basins at 7%. [↑](#footnote-ref-689)
691. Under the PIA, newly discovered fields will no longer be declared as marginal fields. Overall, this

     places the upstream players on a more even ground from a fiscal and regulatory standpoint. [↑](#footnote-ref-690)
692. The Finance Act 2023 and the Tertiary Education Trust Fund (Establishment, Etc.) Act 2011, the Tertiary

     Education Tax is payable for a company registered in Nigeria at the rate of 3% of the assessable profit (previously, it was 2.5%). [The Federal Government increased the TET rate from 2% to 2.5% in the Finance Act 2021](https://www.bomesresourcesconsulting.com/tertiary-education-tax-nigeria.html" \t "_blank). [↑](#footnote-ref-691)
693. The Gas utilization is to be submitted within 12 months of the coming into effect of the law, and be in line

     with the Flare Gas (Prevention of Waste and Pollution) Regulations. [↑](#footnote-ref-692)
694. NOSDRA v Exxon Mobil (2018) 13 NWLR (PT.1636) 334; Tope Alabi v FRSC) FHC/L/CS/123/13. [↑](#footnote-ref-693)
695. MTN Nigeria Communications PLC v FIRS (2020) 50 TLRN, 42. [↑](#footnote-ref-694)
696. Tetra Pak West Africa Ltd v FIRS – consolidated appeals, TAT/LZ/EDT/031/2015;

     TAT/LZ/CIT/032/2015; TAT/LZ/EDT/033/2015 [↑](#footnote-ref-695)
697. The levies are to be remitted by the licensed operator within 21 days of the sale of the relevant products,

     subject to additional regulations to be issued by the Authority. [↑](#footnote-ref-696)
698. Section 272 (1) of the PIA [↑](#footnote-ref-697)
699. Section 272 (2) of the PIA [↑](#footnote-ref-698)
700. Section 234 of the PIA. [↑](#footnote-ref-699)
701. Sections 235 & 236 of the PIA [↑](#footnote-ref-700)
702. Sections 235 & 318 PIA - The Host Community Development Trust (HCDT) is however tax-exempt

     entity. [↑](#footnote-ref-701)
703. Federal Inland Revenue Service (Establishment) Act 2007. [↑](#footnote-ref-702)
704. Section 259 PIA which addresses the matter of administration identifies two distinct agencies for the

     administration and collection of government revenues, i.e., FIRS and the Commission. [↑](#footnote-ref-703)
705. Section 217(8) of the PIA specifically vests the FHC with exclusive jurisdiction over disputes between

     licensees, lessees or permit holders. [↑](#footnote-ref-704)
706. The enactment of the PIA will lead to the repeal of the following statutes: • Associated Gas Reinjection

     Act, 1979 CAP A25 Laws of the Federation 2004, and its Amendments; • Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 Laws of the Federation of Nigeria 2004; • Motor Spirits (Returns) Act, CAP M20 Laws of the Federation of Nigeria 2004; • Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, CAP N124 Laws of the Federation of Nigeria 2004; • Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33 CAP N123 Laws of the Federation of Nigeria as amended, when NNPC ceases to exist pursuant to section 54(3) of this Act; • Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003; • Petroleum Profit Tax Act Cap P13 LFN 2004 upon completion of the conversion process under section 92 of the Act, and; • Deep Offshore and Inland Basin Production Sharing Contract Act 2019,as amended upon completion of the conversion process under section 92 of the Act. Provisions of the Pre-shipment Inspection of Oil Export Act, 1966 shall be amended accordingly. [↑](#footnote-ref-705)
707. Section 302 (10) on the treatment of capital allowances for assets for upstream and midstream petroleum

     operations, and the reading of PIA along with section 24 of CITA about rents and royalty, and with respect to the subject of 2% TET etc. [↑](#footnote-ref-706)
708. Part V, Chapter 1 of the PIA provides for the administration of the Nigerian National Petroleum Company

     (NNPC) Limited which is to be incorporated with the Corporate Affairs Commission within 6 (six) months of the commencement of the Act the assets, interests, and liabilities of NNPC are to be transferred to NNPC Ltd or its subsidiaries within 18 months of commencement of the Act after which NNPC shall cease to exist. [↑](#footnote-ref-707)
709. The Commission has the responsibility of regulating technical, operational, and commercial activities in the

     upstream petroleum sector; monitoring compliance with rules regulating the sector; enforce compliance with the terms and conditions of leases, licences, permits, and authorizations granted to companies in the upstream petroleum sector; establishing and enforcing standards relating to upstream petroleum activities and undertaking evaluation of national reserves while developing policies for prudent reservoir management practices. This involves ensuring efficient and effective infrastructural development, compliance with regulations, implementation of government policies, development of a framework on tariff and pricing, amongst others. [↑](#footnote-ref-708)
710. Starting with the Nigerian Mineral Act (1946), the Petroleum Act and Regulations (1969) and the

     Petroleum Profits Tax Act (1958), and other related Acts. [↑](#footnote-ref-709)
711. See chapters 5, 7, 8 & 9 examine the thesis of effective objective setting in designing the appropriate fiscal

     and tax policy for clear tax legislation and effective compliance and administration, profitable petroleum operations for resource owning and producing countries and adequate returns to investing companies. [↑](#footnote-ref-710)
712. The World Bank – A Guide to Good Governance in Extractive Industries. March 2018.- Natural resources

     play a dominant role in about half the countries on earth, collectively accounting for a quarter of world GDP and half the world’s population with good governance, transparent management, respect for community needs and the environment, revenues from extractive industries can have dramatic impact on reducing poverty and boosting shared prosperity. [↑](#footnote-ref-711)
713. The tax system should not unduly impede or reduce the economy's productive capacity; Transparency and visibility; Taxpayers should know that a tax exists and how and when it is imposed upon them and others; whilst the structuring of tax laws should aim to minimize noncompliance. Accountability to taxpayers is key as well as accessibility and visibility of information on tax laws and their development, modification, and purpose are necessary for taxpayers. [↑](#footnote-ref-712)
714. Hans Gribnau, Legal Certainty: A Matter of Principle, p. 91). Gribnau ironically notices: “Consequently,

     tax laws nowadays look like throw-away articles and tax legislation is unstable”. [↑](#footnote-ref-713)
715. See chapters 7 & 8 of the Thesis. [↑](#footnote-ref-714)
716. The complexity of industry, the capital-intensive nature of petroleum operations and the price fluctuations

     in the international market, and the peculiar environment required a structured, evidence based and well researched approach to respond appropriately to these factors. [↑](#footnote-ref-715)
717. See chapter 6 – survey and analysis of stakeholder responses. [↑](#footnote-ref-716)
718. MOU, AGFA, and PSC fiscal incentives, etc. [↑](#footnote-ref-717)
719. These examine themes and concepts and their inter-relatedness and impact in the determination of the

     level of clarity, certainty and consistent understanding interpretation and implementation, as well as tax authority and payer compliance in petroleum operations tax system, are examined in chapters 1, 2,3 & 4 of the Thesis. [↑](#footnote-ref-718)
720. Studies of countries such as Lebanon, Cyprus, Canada and the UK among other oil rich nations, show

     that at one point in time or the other, that many countries adopted different fiscal regimes with distinctive features, that are mutually beneficial to host government and the IOCs. An Assessment of Nigeria Petroleum Tax Regime Strategy on Foreign Direct Investment, Source: IOSR Journal of Economics and Finance (IOSR-JEF), Volume 9, Issue 6 Ver. I (Nov. – Dec.2018), PP 62-66, www.iosrjournals.org, references studies by Osmundsen (2005), Broadway and Keen (2008), Lukman (2010), Ogbonna (2012) and Nakhle (2015). [↑](#footnote-ref-719)
721. PIA as enacted August 2021 – Starting out as the Petroleum Industry Bill (PIB), it went through several

     reviews and changes to becoming a legislation with its enactment in August 2021 as the PIA. The first major attempt at carrying out a comprehensive study of petroleum fiscal, tax, commercial and legislative review commenced in 2000, with the Commission setup by government to review the petroleum industry, and this resulted in the first executive draft Petroleum Industry Bill (PIB), presented to the National Assembly (NA) in 2008. [↑](#footnote-ref-720)
722. The basis of taxation petroleum operations, the interaction of the concession arrangement and the PSC

     fiscal regime; the various special purpose taxes, income and revenue ascertainment, pricing, tax deductible allowances and losses etc. [↑](#footnote-ref-721)
723. The enactment of the PIA followed extensive engagements on the commercial, contractual, fiscal, tax and

     legislative framework for petroleum operations including, the oil and gas policy review work carried out by the MPR, NNPC, MOF and the FIRS. [↑](#footnote-ref-722)
724. WREN test (wholly, reasonably, exclusively and necessarily incurred test) [↑](#footnote-ref-723)
725. MTN Nigeria Communications Plc v FIRS (2020) 50 TLRN 42; and Tetra Pak West Africa Ltd v FIRS –

     consolidated appeal No TAT/LZ/EDT/031/2015, TAT/LZ/CIT/032/2015; TAT/LZ/EDT/033/2015. [↑](#footnote-ref-724)
726. E,g. The work of the UK Office of Tax Simplification. [↑](#footnote-ref-725)
727. See chapter I – Introduction to the thesis and chapter 2. [↑](#footnote-ref-726)