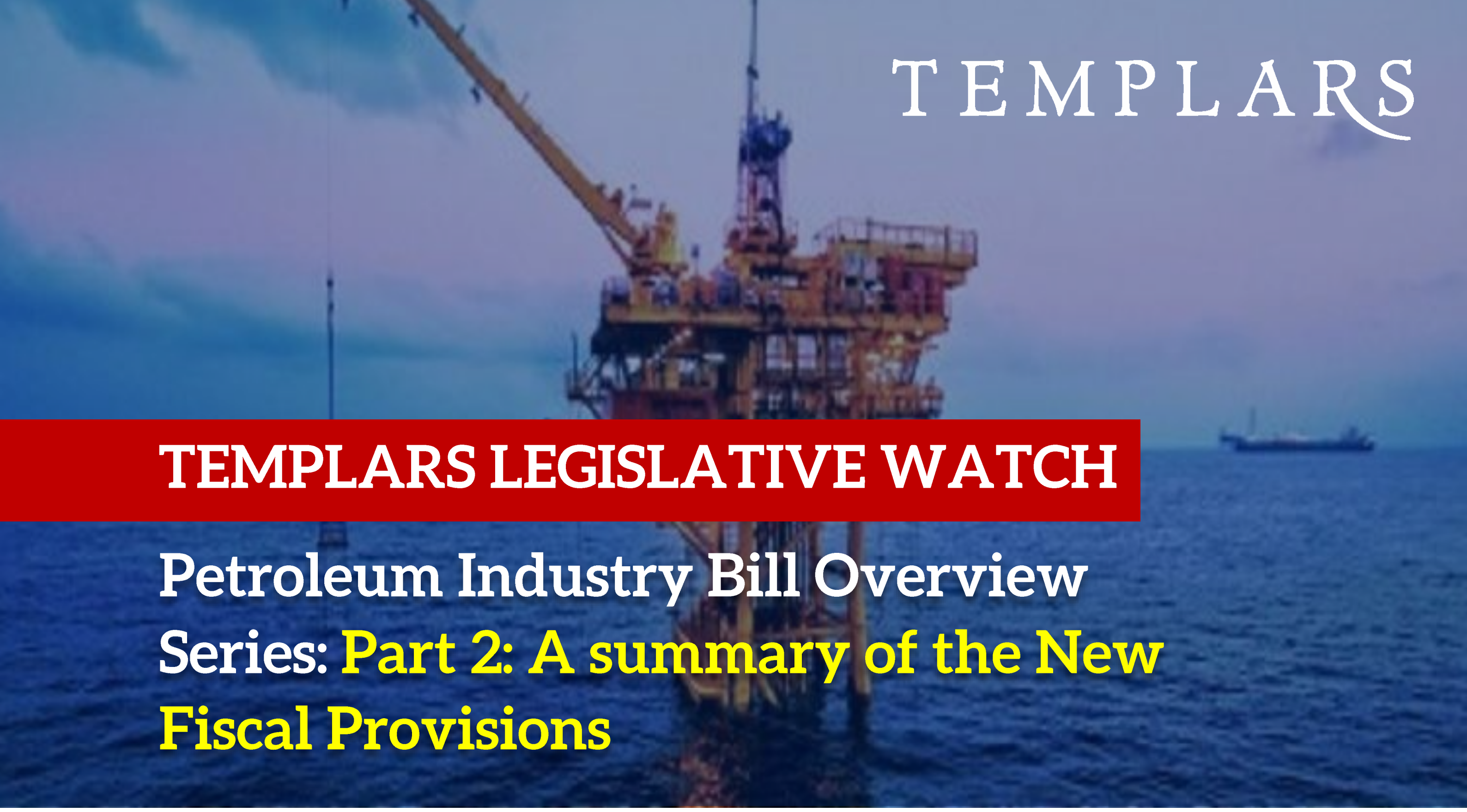

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Petroleum Industry Bill Overview Series: Part 2: A summary of the New Fiscal Provisions

The Petroleum Industry Bill (the **"PIB"** or the **"Bill"**) completely overhauls the fiscal and tax framework in the Nigerian petroleum sector in order to, amongst other things, establish a progressive fiscal framework that encourages investment in the Nigerian petroleum industry.

SCOPE AND APPLICABILITY

The fiscal and tax amendments provided under **Chapter Four** of the PIB shall not apply to holders of an Oil Prospecting License (OPL) or Oil Mining Lease (OML) who do not enter into a conversion contract until the termination or expiration of the respective OPL or OML, but they shall apply to any renewal of an OML.[1]

The implication of the above is that eventually, either by conversion or expiry of time, any holder of an OPL or OML would have their petroleum operations governed by the PIB.

ADMINISTRATION

Administration and collection of the revenue of the Federal Government of Nigeria (FGN) in the petroleum industry will be through the Commission and the Federal Inland Revenue Service (FIRS).

FISCAL CHANGES

Royalty

The PIB has altered the rates for royalty by price, as well as the pricing for deep offshore Production Sharing Contracts (PSCs) and onshore and shallow offshore arrangements.[2]

[1] Section 303(1) of the Bill.

[2] Section 306 of the Bill.

New Royalty by Price

Below US$50 per barrel – 0%;

At US$100 per barrel – 5%;

Above US$150 per barrel – 10%[3]

Where the price per barrel of oil is between (a) US$50 and US$100 per barrel; or (b) US$100 and US$150 per barrel, the royalty by price is to be determined based on linear interpolation.[4]

Deep Offshore

10% royalty rate for deep offshore fields (greater than 200m water depth) in addition to royalty by price.[5]
For deep offshore fields (greater than 200m water depth) producing not more than 15,000 bpd during a month, the royalty rate is 7.5%. Production above 15,000 bpd shall be at the stipulated 10% rate.

Frontier Basin

For frontier basins, the royalty rate is 7.5% in addition to royalty by price.[6]

Onshore/Shallow Offshore

For onshore and shallow offshore fields producing not more than 10,000 bpd:

- For the first 5000 barrels – 5%
- For the next 5000 barrels– 7.5%[7]

For all other onshore and shallow offshore fields producing in excess of 10,000 barrels bpd, the rates are **18% flat rate for onshore** and **16% flat rate for shallow offshore** (up to 200m water depth) plus royalty by price.[8]

Natural Gas and Natural Gas Liquids

Royalty based on production for natural gas and natural gas liquids shall be at a rate per centum of the chargeable volume in the relevant area based on the terrain as follows:

- onshore areas: 7.5%;
- shallow waters: 5%;
- deep offshore areas: 5%; and
- frontier basins: 5%.

Additionally, the royalty rate for natural gas produced and utilized in Nigeria shall be a flat 5% of the chargeable volume.[9]

Cost Recovery

As opposed to the full cost recovery available presently (albeit it being limited under some PSCs), cost recovery (through lifting of Cost Oil) for existing PSCs that are converted to PIB regime is capped at **sixty percent (60%).**[10] It is important to note that this would only be applicable to renegotiated PSCs.

Cost recovery (through lifting of Cost Oil) for PSCs under new acreages granted pursuant to the PIB, is capped at **seventy percent (70%).**[11]

Tax

The PIB will split the current Petroleum Profits Tax (PPT) regime and instead imposes the following taxes:

- Hydrocarbon tax;
- Companies income tax;
- Tertiary education tax; and
- Withholding tax on dividends.

Hydrocarbon tax is a new form of tax applicable only to upstream petroleum operations in relation to crude oil, condensate and natural gas liquids produced from associated gas, and is charged and assessed

[3] Paragraph 11 (a-c) of the 7th Schedule to the Bill.
[4] Paragraph 11(d) of the 7th Schedule to the Bill.
[5] Paragraphs 10(2)(c) and 11 of the 7th Schedule to the Bill.
[6] Paragraphs 10(2)(c) and 11 of the 7th Schedule to the Bill.
[7] Paragraph 10(4) of the 7th Schedule to the Bill.
[8] Paragraph 10(2)(a)(b) and Paragraph 11 of the 7th Schedule to the Bill.
[9] Paragraph 10(5) of the 7th Schedule to the Bill.
[10] Section 311(2) (a) (iii) of the Bill and Paragraph 14(9) of the 7th Schedule to the Bill.
[11] Paragraph 14(4) of the 7th Schedule to the Bill.

on its profits related to such operations and payable during each accounting period.[12]

With respect to any PSC executed prior to the commencement of this Bill and converted pursuant to the Bill, hydrocarbon tax shall be charged and assessed separately on the profits from each and every petroleum mining lease and payable during each accounting period in accordance with the provisions of the Bill.[13]

The tax rates are as follows:

- **Deep Offshore**

  - National Hydrocarbon Tax – **5%** for deep offshore PSCs that convert to the PIB regime and 10% for new acreages granted pursuant to the PIB[14]
  - Companies Income Tax – 30%
  - Education Tax – 2%
  - Withholding Tax – 10% on dividends paid to shareholders from their profits from petroleum operations.

IMPORTANT NOTE(S):

Deep offshore PSCs shall no longer be entitled to investment tax credits (ITC) and investment tax allowances (ITA).

In the place of ITC and ITA, the PIB provides for a Production Allowance[15] viz:

- For converted deep offshore PSCs the lower of 20% of the fiscal price of crude oil or US$2.50 per barrel for any volume.

- For new deep offshore acreages the lower of 20% of the fiscal price of crude oil or US$8 per barrel for up to 500million barrels cumulative production and the lower of 20% of the fiscal price of crude oil or US$4 per barrel post- 500million barrels cumulative production.

- **Onshore and Shallow Offshore**

National Hydrocarbon Tax – 42.5% for onshore acreages that convert to the PIB regime and 22.5% for new onshore acreages granted pursuant to the PIB[16]

OR

National Hydrocarbon Tax – 37% for shallow offshore acreages that convert to the PIB regime and 20% for new shallow offshore acreages granted pursuant to the PIB and

- Companies Income Tax – 30%
- Education Tax – 2%
- Withholding Tax – 10 % on dividends paid to shareholders from petroleum operations profits.

IMPORTANT NOTES:

The PIB provides for a Production Allowance for onshore and shallow offshore[17] viz:

- For converted acreages the lower of 20% of the fiscal price of crude oil or US$2.50 per barrel for any volume.

- For new acreages the lower of 20% of the fiscal price of crude oil or US$8 per barrel for up to 50million barrels (for onshore) and 100million barrels (for shallow offshore) cumulative production and the lower of 20% of the fiscal price of crude oil or US$4 per barrel thereafter.

Applicability of Companies Income Tax

It is critical to note that separate from the imposition of hydrocarbon tax and without prejudice to the Companies Income Tax Act (CITA), any company, concessionaire, licensee, lessee, contractor or sub - contractor involved in the upstream, midstream or

[12] Section 261 of the Bill.
[13] Section 261 of the Bill.
[14] Section 267(e) of the Bill.
[15] Paragraph 1 of the 6th Schedule to the Bill.
[16] Section 267(a) and (c) of the Bill.
[17] Paragraph 1 of the 6th Schedule to the Bill.

downstream petroleum operations under the Bill are subject to income tax under the Bill.[18] Income tax under the PIB shall be determined separately for upstream, midstream and downstream operations.

Companies involved in more than one stream must register and use a separate company for each stream.

Gas Pricing

In order to create long term stability and predictability for the prices of marketable natural gas, the gas pricing framework is also included in the PIB.

For the power and commercial sectors, the gas pricing is linked to the domestic base pricing model provided for in the Third Schedule of the Bill.

- On January 1, 2021 the domestic base price is $ 3.20/MMBtu[19]

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[18] Section 260(6) and Section 302(1) of the Bill.

[19] Paragraph 1 of the 3rd Schedule to the Bill.