



Republic of Namibia
Annotated Statutes

Petroleum (Taxation) Act 3 of 1991

(GG 179)

came into force on 30 September 1992 (section 25,
as amended by Petroleum Matters (Amendment and Validation) Act 27 of 1992)

as amended by

Petroleum Matters (Amendment and Validation) Act 27 of 1992 (GG 489)

came into force on date of publication: 30 September 1992

Petroleum Laws Amendment Act 24 of 1998 (GG 1954)

brought into force on 1 April 1999 by GN 44/1999 (GG 2075)

ACT

To provide for the levying and collection of a petroleum income tax and an additional profits tax in respect of certain income received by or accrued to or in favour of persons in connection with exploration operations, development operations or production operations carried out in Namibia in relation to petroleum; and to provide for matters incidental thereto.

(Signed by the President on 19 March 1991)

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions proposed.

[] Words in bold type in square brackets indicate omissions proposed.

[This explanatory note appears above the long title of the Act in the *Government Gazette*.
It has been moved below the long title here, which is the more usual position.]

ARRANGEMENT OF SECTIONS

1. Definitions

PART I
Application and administration of this Act

2. Application of this Act
3. Act to be administered by Permanent Secretary
4. Application of Income Tax Act in relation to administration of this Act

PART II
Petroleum income tax

5. Levy of petroleum income tax
6. Rate of petroleum income tax
7. Determination of gross income
8. General deductions allowed in determination of taxable income
9. Deductions allowed in respect of capital expenditure incurred in or before year of production
10. Deductions allowed in respect of capital expenditure after year of production
[In the text of the Act, the heading of section 10 is "Deductions allowed in respect of capital expenditure incurred after year of production".]
11. Deductions allowed on transfer of production licences
12. Amounts exceeding capital expenditure deemed to be gross income
13. Deductions not to be allowed
14. Expenditure incurred outside Namibia
15. Apportionment of expenditure in terms of operating agreement between joint holders of a production licence
16. Double deductions
17. Expenditure incurred in connection with agreements between persons associated with each other
18. Allowable losses

PART III
Additional profits tax

19. Levy of additional profits tax
20. Liability for additional profits tax
21. Determination of additional profits tax
22. Modification of provisions of this Part in terms of agreements

PART IIIA

**TAX ON REFUNDS OF SURPLUS AMOUNTS IN TRUST FUNDS
REFERRED TO IN SECTION 68D(3) OF THE PETROLEUM
(EXPLORATION AND PRODUCTION) ACT, 1991 (ACT 2 OF 1991)**

- 22A. Tax on surplus amounts in trust funds

[PART IIIA, comprising section 22A, is inserted by Act 24 of 1998. The capitalisation and spacing in the heading of this Part is inconsistent with the rest of the Act.]

PART IV
Returns, assessments, objections and appeals,
payment and recovery of tax,
representative taxpayers,
refunds and other miscellaneous matters

23. Application of provisions of Income Tax Act in relation to returns, assessments, objections and appeals, payment and recovery of tax, representative taxpayers, refunds and other miscellaneous matters

PART V
General provisions

24. Amendment of Act 24 of 1981
25. Short title and commencement

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Definitions

1. In this Act, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Petroleum (Exploration and Production) Act, 1991, shall have that meaning, and -

“additional profits tax” means the additional profits tax referred to in section 19;

“allowable deduction” means a deduction allowable under section 8, 9, 10 or 11;

“allowable loss” means any amount established in terms of section 18;

“capital expenditure” means exploration expenditure or development expenditure or exploration expenditure and development expenditure, as the case may be, and includes for the purposes of section 9, capital expenditure as defined in section 36 of the Income Tax Act incurred before the commencement of this Act by a person for purposes of exploration operations and development operations in the licence area in question;

“development expenditure” means expenditure actually incurred, whether directly or indirectly, in or in connection with the carrying out of development operations in or in connection with a licence area, including expenditure actually incurred in respect of -

- (a) the acquisition of -
- (i) machinery, implements, utensils and other articles used for purposes of such operations, including pipes, units for purposes of production, treatment and processing, wellhead equipment, subsurface equipment, enhanced recovery systems, onshore and offshore drilling and production platforms and petroleum storage facilities;
 - (ii) furniture, tools and equipment used in offices and accommodation referred to in paragraph (e)(ii) of the definition of “development operations” and in warehouses, export terminals, harbours, piers, marine vessels, vehicles,

Petroleum (Taxation) Act 3 of 1991

motorised rolling equipment, aircraft, fire and security stations, water and sewage plants and power plants;

- (b) labour, fuel, haulage, supplies, materials and repairs in connection with the drilling, laying, installation and construction referred to in paragraphs (a), (b), (c), (d) and (e)(i) of the definition of “development operations”;
- (c) contributions to a fund or scheme, approved by the Permanent Secretary, in respect of any person employed in or in connection with development operations;
- (d) the advancement of training and education of Namibian citizens at institutions approved by the Permanent Secretary after consultation with the Commissioner and the provision of educational and scientific materials and equipment by virtue of any term and condition of a licence issued in respect of such licence area;
- (e) charges, fees or rent for, or in respect of, land or buildings occupied for purposes of carrying out development operations;
- (f) subject to the provisions of section 14(2), the general administration and management directly connected with development operations;
- (g) the restoration of such licence area, or any part thereof, after cessation of development operations in such licence area to the extent to which such expenditure has been incurred by virtue of any term and condition of the licence issued in respect of such licence area relating to safety or the prevention of pollution;
- (h) customs duty in respect of the importation for use in or in connection with development operations in such licence area of plant, machinery, equipment, spare parts, materials, supplies or consumable items to be used in or in connection with such development operations;

“development operations”, in relation to a licence area, means operations carried out for or in connection with the development of a petroleum reservoir situated in such licence area and the appraisal of such reservoir and includes -

- (a) the drilling, completion and testing of wells drilled for purposes of such development;
- (b) the drilling and completion of wells for purposes of gas or water injection in order to enhance the recovery of petroleum;
- (c) the laying of gathering lines;
- (d) the installation of -
 - (i) offshore platforms and installations;
 - (ii) machinery, implements, utensils and other articles required for purposes of producing, treatment or processing petroleum or for conveying petroleum, either onshore or offshore, into main oil storage or processing facilities, including pipelines within or outside such licence area to such storage or processing facilities;
- (e) the construction and erection of facilities for purposes of -

Petroleum (Taxation) Act 3 of 1991

- (i) production, storage gathering and conveyance of petroleum, and roads in or to such licence area;
- (ii) offices and residential accommodation for the use by persons employed by such person in or in connection with production operations or development operations, or for purposes of health, educational and recreational facilities connected with such operations;

“exploration expenditure”, in relation to a licence area, means expenditure actually incurred, whether directly or indirectly, in or in connection with the carrying out of exploration operations in or in connection with such licence area, including expenditure actually incurred in respect of -

- (a) the acquisition of machinery, implements, utensils and other articles employed for purposes of such operations, including pipes, wellhead equipment, subsurface equipment and onshore and offshore drilling;
- (b) labour, fuel, haulage, supplies, materials and repairs in connection with a survey or study, excluding drilling for appraisal purposes, referred to in paragraphs (a) and (b) of the definition of “exploration operations” in section 1 of the Petroleum (Exploration and Production) Act, 1991;
- (c) contributions to a fund or scheme, approved by the Permanent Secretary, in respect of any person employed in or in connection with exploration operations;
- (d) the advancement of training and education of Namibian citizens at institutions approved by the Permanent Secretary after consultation with the Commissioner, and the provision of educational and scientific materials and equipment by virtue of any term and condition of an exploration licence issued in respect of such licence area;
- (e) charges, fees or rent for, or in respect of, land or buildings occupied for purposes of carrying out exploration operations;
- (f) subject to the provisions of section 14(2), the general administration and management directly connected with exploration operations;
- (g) the restoration of such licence area, or any part thereof, after cessation of exploration operations in such area to the extent to which such expenditure has been incurred by virtue of any term and condition of an exploration licence issued in respect of such licence area relating to safety or the prevention of pollution;
- (h) customs duty in respect of the importation for use in or in connection with exploration operations in such licence area of plant, machinery, equipment, spare parts, materials, supplies or consumable items used in or in connection with such exploration operations;

“gross income”, in relation to tax, means the gross income of a person determined in accordance with the provisions of section 7;

“Income Tax Act” means the Income Tax Act, 1981 (Act 24 of 1981);

“initial treatment”, in relation to petroleum produced and saved in a licence area, means -

Petroleum (Taxation) Act 3 of 1991

- (a) the subjection of such petroleum to any process of which the sole purpose is to enable such petroleum to be safely stored, safely loaded into a tanker or safely accepted by an oil refinery; or
- (b) the separation of methane gas from such petroleum,

but shall not include -

- (i) the storage of petroleum whether or not such storage involves the subjection and separation contemplated in paragraph (a) or (b);
- (ii) any activity carried out as part of, or in association with, the refining of petroleum;

“licence” means an exploration licence or a production licence;

“licence area” means -

- (a) in the case of an area to which an exploration licence has been issued, the exploration area to which such licence relates;
- (b) in the case of an area to which a production licence has been issued, the production area to which such licence relates or, if more than one production licence is issued in relation to an area to which an exploration licence has been issued, all such production areas to which such licences relate;

“Minister” means the Minister of Finance;

“net cash receipts”, in relation to any amount received by or accrued to or in favour of a person or, in the case of persons who are the joint holders of a licence issued in respect of a licence area, all such persons from a licence area in connection with exploration operations, development operations or production operations carried out in a tax year in such licence area, means the amount, whether expressed in a negative or a positive figure, remaining after deducting from the gross income actually received or accrued by or in favour of such person in such tax year -

- (a) all allowable deductions other than a deduction referred to in section 8(a)(iv) as if they were, in the case of exploration expenditure and development expenditure referred to in section 9, excluding subsection (1)(aA) thereof, and section 10, excluding subsection (1)(aA) thereof, allowed in the year in which such exploration expenditure and development expenditure were actually incurred;

[Paragraph (a) of the definition of “net cash receipts” is amended by Act 24 of 1998. The amending Act corrects a misspelling of the word “section” without indicating this in the amendment markings.]

- (b) petroleum income tax paid by such person on taxable income from such licence area in respect of such tax year;
- (c) any amount of tax, if any, determined -
 - (i) in relation to the second accumulated net cash position referred to in section 19(2), in accordance with the provisions of paragraph (a) of section 21; and

Petroleum (Taxation) Act 3 of 1991

- (ii) in relation to the third accumulated net cash position referred to in the said section 19(2), in accordance with the provisions of paragraphs (a) and (b) of the said section 21;

“Permanent Secretary” means the Permanent Secretary: Finance;

“petroleum agreement” means a petroleum agreement referred to in section 13 of the Petroleum (Exploration and Production) Act, 1991;

“petroleum income tax” means petroleum income tax referred to in section 5;

“petroleum information” means geological, geophysical, geochemical, palaeontological or other technical information which relates to the presence, absence or extent of deposits of petroleum at any place in Namibia, or is likely to be of assistance in determining the presence, absence or extent of any such deposits;

“production operations”, in relation to a licence area, includes -

- (a) the conveyance in Namibia of petroleum to the place where it is delivered for purposes of section 7(1)(a) or (b), or conveyance for refining or other processing purposes;
- (b) the initial treatment of petroleum produced from such licence area,

but shall not include development operations or exploration operations;

“tax” or “the tax” means petroleum income tax or additional profits tax, as the case may be;

“taxable income” means the amount remaining after deducting from the gross income of any person all allowable deductions and all allowable losses;

“tax year”, in relation to a licence area, means each period of a year ending on 31 December commencing with such year in which a licence has been issued in respect of such licence area;

“the Price Index” means the value of the United States Industrial Goods Producer Price Index reported for the first time for the tax year in question in the monthly publication of the International Monetary Fund known as “*International Financial Statistics*” in the section titled “*Prices, Production, Employment*”;

**[definition of “the Price Index” amended by Act 24 of 1998;
not all of the changes are indicated by amendment markings]**

“year of production”, in relation to a licence area, means the tax year ending 31 December in which petroleum produced and saved from such licence area is first sold or otherwise dealt with on a commercial basis.

PART I

Application and administration of this Act

Application of this Act

2. Notwithstanding the provisions of the Income Tax Act, no tax shall be chargeable under that Act in respect of

Petroleum (Taxation) Act 3 of 1991

- (a) any income to which this Act relates;
- (b) any dividends, as defined in section 1 of the Income Tax Act, paid out of profits from any such income.

Act to be administered by Permanent Secretary

3. The Permanent Secretary shall be responsible for carrying out the provisions of this Act.

Application of Income Tax Act in relation to administration of this Act

4. (1) The provisions of sections 3 and 4 of the Income Tax Act shall apply *mutatis mutandis* in relation to the administration of this Act.

- (2) The Minister may by notice in the *Gazette* determine -
 - (a) that any provision referred to in subsection (1) of this section shall not apply in relation to the administration of this Act;
 - (b) that any such provision shall so apply with such modifications as may be so determined;
 - (c) that any other provisions of the said Income Tax Act shall so apply with such modifications, if any, as may be so determined.

PART II

Petroleum income tax

Levy of petroleum income tax

5. (1) There shall be paid annually for the benefit of the State Revenue Fund a petroleum income tax in respect of taxable income received by or accrued to or in favour of any person from a licence area in connection with exploration operations, development operations or production operations carried out in any tax year in such licence area.

(2) The petroleum income tax referred to in subsection (1) shall be leviable under this Act in respect of each licence area separately and shall be so determined and chargeable.

Rate of petroleum income tax

6. The rate of petroleum income tax to be levied shall be 35 per cent of the taxable income received by or accrued to or in favour of any person from a licence area in connection with exploration operations, development operations or production operations in any tax year carried out in such licence area.

[Section 6 is amended by Act 24 of 1998 to change
the petroleum income tax rate from 42 per cent to 35 per cent.]

Section 6(2) of Act 24 of 1998 contains the following transitional provision:

“Subsection (1) shall come into operation on the commencement of
the first ensuing tax year after the commencement of this Act.”]

Determination of gross income

Petroleum (Taxation) Act 3 of 1991

7. (1) For purposes of the provisions of this Act, the gross income of a person shall be the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a licence area in connection with exploration operations, development operations or production operations carried out in any tax year in such licence area, excluding amounts so received or accrued being of a capital nature, but including, without limiting the scope of this subsection, the following amounts (whether of a capital nature or not) so received or accrued, namely -

- (a) the amount received by or accrued to or in favour of such person for so much of the share of petroleum in crude form of such person, determined as provided in subsection (3), as was produced and saved in such licence area, delivered by such person in the tax year and so disposed of by such person in a sale at arm's length contemplated in subsection (4);
- (b) the market value, determined as provided in subsection (5), of the share of petroleum in crude form of such person, determined as provided in subsection (3), as was produced and saved in such licence area, delivered by such person in the tax year and so disposed of by such person in a sale other than a sale at arm's length contemplated in subsection (4);
- (c) the market value, determined as provided in subsection (5), of the share of petroleum in crude form of such person, determined as provided in subsection (3), which was produced and saved in such licence area and which was, without being disposed of, appropriated by such person in the tax year for refining or other processing purposes;

[The phrase "produced and saved in such licence area" contains typographical errors and probably should be "produced and saved in such licence area".]

- (d) one-half of the market value, determined as provided in subsection (5), of the share of petroleum in crude form of such person, determined as provided in subsection (3), which was produced and saved in such licence area and which was in the tax year -
 - (i) not in any manner lost;
 - (ii) not disposed of or appropriated for refining or other processing purposes; or
 - (iii) disposed of, but not delivered;
- (e) any amount received by or accrued to or in favour of such person in the tax year under a policy of insurance or otherwise in respect of any loss, partly or wholly, of -
 - (i) the share of petroleum in crude form of such person, determined as provided in subsection (3), which was produced and saved in such licence area;
 - (ii) income which would have been gross income of such person in respect of such licence area if such loss had not occurred;
- (f) any amount received by or accrued to or in favour of such person in the tax year from such licence area and deemed, under the provisions of section 12(1), to be gross income for purposes of this section;
- (g) any amount received by or accrued to or in favour of such person in the tax year from the sale of petroleum information in relation to such licence area;

Petroleum (Taxation) Act 3 of 1991

- (h) any other amount received by or accrued to or in favour of such person in the tax year which is, in terms of any term and condition of a licence, regarded as gross income for purposes of this Act.

(2) Any amount referred to in subsection (1) which was received by or accrued to or in favour of any person referred to in that subsection before the year of production from any licence area shall be deemed to have been received by or accrued to or in favour of any person during the year of production and shall, for purposes of determining the gross income of such person for the year of production, be included in the gross income determined in accordance with the provisions of that subsection.

(3) For the purposes of subsection (1), the share of petroleum in crude form of a person produced and saved in a licence area -

- (a) shall -
 - (i) during any period in which such person is the sole holder of a licence to which such licence area relates, be all of such petroleum so produced and saved;
 - (ii) during any period in which such person and one or more other persons are joint holders of such licence, be so much of such petroleum -
 - (aa) as may accrue to such person in terms of any agreement entered into between all holders of such licence and submitted to the Permanent Secretary for purposes of this section in which provision is made for the division of all such petroleum produced and saved from such licence area among such holders or among such holders and the Government, the Corporation or any body established by or under any law controlling or entitled to control by virtue of such law funds accruing to it as a whole or partly from moneys appropriated by law; or
 - (bb) if no such agreement has been entered into or if such agreement has been cancelled, as may be regarded as the share of such person if all such petroleum produced and saved from such licence area is equally divided among such holders or such holders and the Government, the Corporation or such body;
 - (b) shall not include any petroleum to which the Government or the Corporation is entitled by way of profit sharing or on account of its participation in any production operations in such area and which was delivered to the Government, the Corporation or body referred to in paragraph (a).
- (4) (a) For the purposes of subsection (1), a sale of petroleum shall be a sale at arm's length if -
- (i) the price provided for in any agreement of sale is the sole consideration in respect of such sale;
 - (ii) the sale is not affected by any relationships other than the relationship created by the agreement of sale between the seller or any other person associated with such seller and the purchaser or any other person associated with such purchaser; and

Petroleum (Taxation) Act 3 of 1991

- (iii) the seller or any other person associated with such seller has, whether directly or indirectly, no interest in the subsequent resale or disposal of the petroleum or any by-product of such petroleum.
- (b) Any proportion other than a particular quantity of the share of petroleum in crude form of such person, determined as provided in paragraph (a), acquired by any other person, whether directly or indirectly, under an arrangement or agreement, shall, for purposes of subsection (1), be regarded as having been disposed of to such other person by such person in a manner other than in a sale at arm's length.
- (c) Any petroleum acquired as contemplated in paragraph (b) which is, in terms of such arrangement or agreement, delivered by such person to such other person or to any other person acting on behalf of such other person, shall, for purposes of subsection (1), be regarded as having been delivered by such person notwithstanding the fact that he or she is not the owner of such petroleum.
- (d) For purposes of this subsection, a person shall be deemed to be associated with a seller or with a purchaser, as the case may be -
 - (i) if any other person has, directly or indirectly, any interest in any business or property in which such seller or purchaser, as the case may be, has, directly or indirectly, any interest; or
 - (ii) if any other person has, directly or indirectly, both an interest in any business or property of such seller or purchaser, as the case may be, and the person referred to in subparagraph (i).
- (5) For purposes of subsection (1), the market value of petroleum produced and saved from a licence area shall be -
 - (a) determined in accordance with any term or condition of the licence to which such licence area relates; or
 - (b) if no such term or condition exists, determined by the Permanent Secretary, having regard to an amount which will be obtained on a sale of such petroleum between a willing seller and a willing purchaser acting in good faith.
- (6) For purposes of subsection (1), petroleum produced and saved in a licence area shall be regarded to be in crude form if, whether or not it has undergone initial treatment, it has not been refined or otherwise processed.

General deductions allowed in determination of taxable income

8. For purposes of determining the taxable income derived by a person in respect of a tax year, there shall, subject to the provisions of section 13, be allowed as deductions from the gross income received by or accrued to or in favour of such person in respect of every licence area, expenditure, excluding expenditure of a capital nature, actually incurred by such person in respect of such licence area in the production of such gross income, including -

Petroleum (Taxation) Act 3 of 1991

- (a) such expenditure so incurred in respect of -
- (i) repairs or maintenance of any premises occupied for purposes of carrying out exploration operations, development operations or production operations in or in connection with such licence area, including repairs of machinery, implements, utensils and other articles employed by such person for such purposes;
 - (ii) charges, fees or rent for or in respect of land or buildings occupied for purposes of carrying out production operations in or in connection with such licence area;
 - (iii) contributions to a fund or scheme, approved by the Permanent Secretary, in respect of any person employed by such person in or in connection with production operations in or in connection with such licence area;
 - (iv) interest and other moneys paid during the year of assessment on loans or other debts which, to the satisfaction of the Permanent Secretary, has been utilized or incurred for purposes of carrying out exploration operations, development operations or production operations in or in connection with such licence area;
 - (v) any royalty levied under, and paid in terms of, the provisions of the Petroleum (Exploration and Production) Act, 1991, in connection with petroleum produced and saved in such licence area;
 - (vi) the advancement of the education and training of Namibian citizens at institutions approved by the Permanent Secretary, and the provision of educational and scientific material and equipment in terms of any term or condition of a production licence issued in respect of such licence area;
 - (vii) wages and salaries of persons employed by such person in or in connection with production operations carried out in such licence area;
 - (viii) consumable items used in respect of the production, conveyance and storage facilities in or in connection with production operations carried out in such licence area;
 - (ix) the right of use of any plant, machinery, equipment or other article used in or in connection with exploration operations, development operations or production operations carried out in such licence area;
 - (x) customs duty in respect of the importation for use in or in connection with production operations carried out in such licence area of plant, machinery, equipment, spare parts, materials, supplies or consumable items to be used in or in connection with such production operations;
 - (xi) subject to the provisions of section 14(2), general administration and management directly connected with production operations carried out in such licence area;
 - (xii) the restoration of a licence area, or any part thereof, after cessation of exploration operations in such licence area to the extent to which such expenditure may, by virtue of any term and condition of a licence issued in

Petroleum (Taxation) Act 3 of 1991

respect of such area, be allowed as a deduction in determining such person's taxable income;

**[subparagraph (xii) amended by Act 24 of 1998;
not all of the changes are indicated by amendment markings]**

- (b) any debts due to such person to the extent to which they are proved to the satisfaction of the Permanent Secretary to be bad, provided such amount is included in the current tax year or was included, but not deducted, in any previous tax year in such person's income;
- (c) any amount which has been included in the gross income of such person in terms of section 7(1)(d) in the immediately preceding tax year in respect of such licence area.
- (d) (i) the amount calculated in accordance with the formula referred to in section 68B(1)(a) of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991), and deposited in the tax year concerned in the trust fund referred to in that section; and
 - (ii) in the tax year in which decommissioning has been completed, the shortfall referred to in section 68D(3)(a) of the Petroleum (Exploration and Petroleum) Act, 1991.

[paragraph (d) inserted by Act 24 of 1998]

Deductions allowed in respect of capital expenditure incurred in or before year of production

9. (1) For purposes of determining the taxable income derived by a person, there shall be allowed, subject to the provisions of this section, as deductions from the gross income received by or accrued to or in favour of such person in respect of a licence area -

- (a) in the year of production -
 - (i) all exploration expenditure incurred in or before the year of production;
 - (ii) one-third of all development expenditure incurred in or before the year of production;
- (aA) in any year of production after the commencement of section 11 of the Petroleum Laws Amendment Act, 1998, in addition to the exploration expenditure referred to in paragraph (a)(i), any exploration expenditure incurred by the holder of the licence in question in respect of any other licence area or areas in which no gross income was received by or accrued to or in favour of such holder in connection with exploration operations in such other licence area or areas during that year of production or any earlier year of production after such commencement: Provided that where gross income is received by or accrued to or in favour of the person concerned in respect of a second or more than two licence areas, a portion of the exploration expenditure incurred in the other licence areas where there is no gross income shall be allowed in the proportion that the gross income so received or accrued, less the amounts deducted in terms of section 8 in respect of such gross income relating to each such area, bears to the total of all such gross income less section 8 deductions from all such areas in the year;

[paragraph (aA) inserted by Act 24 of 1998]

Petroleum (Taxation) Act 3 of 1991

- (b) in the tax year immediately succeeding the year of production, one-third of all development expenditure incurred as contemplated in paragraph (a)(ii);
 - (c) in the tax year succeeding the tax year referred to in paragraph (b), one-third of all development expenditure incurred as contemplated in paragraph (a)(ii).
- (2) (a) Where an amount has been received by or accrued to or in favour of a person referred to in subsection (1) in or before the year of production in respect of the disposal, loss or destruction of any asset, or any part thereof or interest therein, used in connection with exploration operations or development operations, capital expenditure incurred in respect of such asset shall, if otherwise allowable as a deduction under this section, be allowable only to the extent to which the amount by which such capital expenditure exceeds the amount so received or accrued.
- (b) For purposes of paragraph (a), the amount so received by or so accrued to or in favour of the person concerned shall be -
- (i) if such asset was disposed of by way of a sale for a specified price, the price for which it was sold, less the expenses of the sale of such asset;
 - (ii) if such asset was disposed of together with other property by way of a sale and a separate price was not determined in respect of such asset, such part of the price for which such asset and such property were sold as may be determined by the Permanent Secretary, less such part of such expenses as may be so determined;
 - (iii) if the asset was disposed of otherwise than by way of a sale, the value of such asset as at the date of disposal;
 - (iv) if such asset was lost or destroyed, such amount as may be received by or accrued to or in favour of such person under a policy of insurance or otherwise in respect of such loss or destruction.

(3) Any capital expenditure incurred otherwise than in respect of an asset shall, if otherwise allowable as a deduction under this section, be reduced by any amount received by or accrued to or in favour of such person in or before the year of production from a recovery or recompense of any of such expenditure.

Deductions allowed in respect of capital expenditure incurred after year of production

10. For purposes of determining the taxable income derived by a person in respect of a tax year, there shall be allowed as deductions from the gross income received by or accrued to or in favour of such person in respect of a licence area -

- (a) all exploration expenditure incurred in any tax year after the year of production in such licence area;
- (aA) in addition to the exploration expenditure referred to in paragraph (a), any exploration expenditure incurred in any tax year after the year of production by the holder of the licence in question in respect of any other licence area or areas in which no gross income was received by or accrued to or in favour of such holder in connection with exploration operations in such other licence area or area during that tax year: Provided that where gross income is received by or accrued to or in favour of the holder concerned in respect of a second or more than two licence

areas, a portion of the exploration expenditure incurred in the other licence areas where there is no gross income shall be allowed in the proportion that the gross income so received or accrued, less the amounts deducted in terms of section 8 in respect of such gross income relating to each such area, bears to the total of all such gross income less section 8 deductions from all such areas in the year;

[paragraph (aA) inserted by Act 24 of 1998]

- (b) in the case of capital expenditure other than capital expenditure referred to in paragraph (a) incurred in any such tax year, one-third of such expenditure in such tax year and one-third of such expenditure in each of the two immediately succeeding tax years.

Deductions allowed on transfer of production licences

11. (1) Where a production licence which relates to a licence area is transferred after the year of production, the holder of such licence and the person to whom such licence is transferred shall submit, within a period of 30 days after the date on which such licence is so transferred or such later date as the Permanent Secretary may on good cause shown allow in writing, to the Permanent Secretary a statement in such form as may be determined by the Permanent Secretary -

- (a) identifying any assets which passed to such person on such transfer;
- (b) stating the proportion of the consideration given for such transfer or, if no consideration has been given, the value of such assets.

(2) If the Permanent Secretary is satisfied with a statement submitted in terms of subsection (1), the proportion of the consideration or value, as the case may be, stated in such statement shall -

- (a) for the purposes of section 10, rank as capital expenditure incurred by the person to whom such licence has been transferred in respect of such licence area and such assets in the tax year in which such transfer occurred;
- (b) for the purposes of section 12, rank as assets received by or accrued to or in favour of the person who transferred the licence in question.

(3) If the Permanent Secretary is not so satisfied or if no statement has been submitted in terms of subsection (1) within the period referred to in that subsection, the Permanent Secretary shall determine the value of such assets and such value shall thereupon rank as provided in subsection (2).

(4) For the purposes of this section, "asset" means an asset in respect of which a deduction has been allowed or is allowable in determining the taxable income of the holder of the licence derived from the licence area in question in any tax year or tax years succeeding the year of production in such licence area.

Amounts exceeding capital expenditure deemed to be gross income

12. (1) Where the aggregate of -
- (a) any deduction allowed or allowable on the gross income of a person in any tax year after the year of production in respect of capital expenditure incurred in or in

Petroleum (Taxation) Act 3 of 1991

connection with a licence area in respect of an asset, or any part thereof or any interest therein; and

- (b) any amount received by or accrued to or in favour of such person in such tax year from the disposal, loss or destruction of such asset or from the transfer of such asset referred to in section 11,

exceeds the capital expenditure referred to in paragraph (a), the amount of such excess shall be deemed to be gross income received by or accrued to or in favour of such person from such licence area in the tax year in which such amount was so received or so accrued.

(2) The provisions of section 9(2)(b) shall apply *mutatis mutandis* in relation to the determination of the amount referred to in subsection (1).

Deductions not to be allowed

- 13.** (1) No deduction shall be allowed under section 8 in respect of -
- (a) any expenditure incurred in respect of improvements not being an allowable deduction under section 8(a)(i);
 - (b) any expenditure incurred in respect of charges, fees or rent for or in respect of land or buildings, not being an allowable deduction under section 8(a)(ii);
 - (c) any expenditure incurred in respect of contributions to a fund or scheme, not being a fund or scheme which is approved by the Permanent Secretary, not being an allowable deduction under section 8(a)(iii);
 - (d) any expenditure incurred in respect of a pecuniary obligation incurred in obtaining a loan or any other debt, not being an allowable deduction under section 8(a)(iv);
 - (e) any capital withdrawn or any sum utilized or intended to be utilized as capital;
 - (f) any expenditure incurred in respect of the acquisition of any land or an interest in any land or rights over or in respect of any land;
 - (g) any expenditure wholly or partly depending on or determined by reference to the quantity, value or proceeds of, or the profits from, petroleum produced under the authority of a production licence not being a deduction allowed in terms of section 8(a)(v);
 - (h) any expenditure incurred for the purpose of obtaining a direct or indirect interest in petroleum produced under the authority of a production licence;
 - (i) any payment in respect of the tax, or of tax within the meaning of the Income Tax Act or of any tax levied, whether within or outside Namibia, under any other law.

(2) No deduction shall be allowed under section 8 or otherwise in respect of any expenditure which according to any term and condition of a licence shall not be so allowed.

Expenditure incurred outside Namibia

14. (1) Subject to the provisions of subsection (2), the provisions of section 8, 9, 10 or 11 shall apply also in relation to expenditure incurred by a person outside Namibia.

Petroleum (Taxation) Act 3 of 1991

(2) Any expenditure, including expenditure in respect of rent, incurred by a person in the tax year outside Namibia in respect of general administration and management of the business of the person referred to in section 8(a)(xi) and capital expenditure referred to in paragraph (f) of the definition of “development expenditure” and paragraph (f) of the definition of “exploration expenditure” in section 1, shall, if otherwise an allowable deduction under this Act, be allowed as a deduction only to the extent to which provision is made in any term and condition of a licence or, if no such term and condition exists, to such extent as the Permanent Secretary may consider such expenditure to be just and reasonable having regard to the amount of such expenditure or to such amount and the extent and nature of the exploration operations, development operations or production operations carried out by such person.

[subsection (2) amended by Act 24 of 1998]

Apportionment of expenditure in terms of operating agreement between joint holders of a production licence

15. Any allowable deduction shall, in the case of joint holders of a production licence who have entered into and who have for the purposes of this section, submitted to the Permanent Secretary an operating agreement not inconsistent with the provisions of this Act providing for -

- (a) the apportionment of expenditure; or
- (b) the reimbursement of any person (who may or may not be one of such joint holders) for expenditure incurred in carrying on exploration operations, development operations or production operations in or in connection with such licence area,

in determining the taxable income received by or accrued to or in favour of such joint holders from such licence area, be subject to, and be allowed, in accordance with such agreement in the tax year to which it relates for so long as it is in force.

Double deductions

16. (1) Any allowable deduction which may in terms of different provisions of this Act be allowed in respect of a person as a deduction, whether it may be so allowed in respect of one or more tax years or not, shall not be allowed as a deduction on more than one occasion.

[subsection (1) amended by Act 24 of 1998 to insert a missing word]

(2) Any allowable deduction allowed in respect of particular expenditure in determining the taxable income of any person shall not be allowed in determining the taxable income of any other person.

(3) Any allowable deduction in relation to expenditure incurred by a person in relation to two or more licence areas shall, in determining the taxable income of such person from any such area, be allowed in respect of each licence area on such basis as may be determined by the Permanent Secretary after consultation with such person and having considered representations, if any, made by such person in connection with the basis on which such expenditure has been incurred in respect of each licence area.

Expenditure incurred in connection with agreements between persons associated with each other

17. If the Permanent Secretary is satisfied that any allowable expenditure incurred under an agreement or arrangement between two or more persons who are associated with each other, determined as provided in section 7(4)(d), would have been such lesser amount of expenditure as may be determined by the Permanent Secretary if such persons were not so associated, the Permanent Secretary may reduce such expenditure, for purposes of determining the taxable income of the person who incurred such expenditure, to the amount so determined.

Allowable losses

18. Any amount, established to the satisfaction of the Permanent Secretary, by which any allowable deduction allowed in a tax year exceeded the gross income of a person in respect of which such deductions were allowed shall, for purposes of determining the taxable income of such person be allowed to be deducted as an allowable loss against the gross income of such person in the succeeding tax year.

PART III Additional profits tax

Levy of additional profits tax

19. (1) There shall be paid annually for the benefit of the State Revenue Fund an additional profits tax, determined in accordance with the provisions of section 21, in respect of the first accumulated net cash position, the second accumulated net cash position and the third accumulated net cash position, determined in respect of every tax year in accordance with the provisions of subsection (2), when expressed in a positive amount.

(2) For purposes of determining in accordance with the provisions of subsection (1) the amount of any additional profits tax payable in a tax year in respect of a licence area in terms of that subsection, the first accumulated net cash position, the second accumulated net cash position and the third accumulated net cash position shall be determined in accordance with the formula -

$$(A \times B) + C,$$

in which formula -

- A, represents, subject to the provisions of subsections (3) and (4) -
- (a) in the case of the first accumulated net cash position, the first accumulated net cash position;
 - (b) in the case of the second accumulated net cash position, the second accumulated net cash position; and
 - (c) in the case of the third accumulated net cash position, the third accumulated net cash position,

in relation to such licence area at the end of the tax year immediately preceding the tax year in respect of which the determination is to be made;

- B, represents 100 per cent -

Petroleum (Taxation) Act 3 of 1991

- (i) plus, in the case of the first accumulated net cash position, 15 per cent, in the case of the second accumulated net cash position, 20 per cent and, in the case of the third accumulated net cash position, 25 per cent;
- (ii) plus the average change, expressed in a percentage, during such tax year in the annual average level of the Price Index or such other price index so expressed, as may be determined in respect of such licence area by mutual agreement between the Minister and the holder or holders of the licence in question and made known by the Permanent Secretary by notice in the Gazette; and

[subparagraph (ii) amended by Act 24 of 1998]

- C, represents the net cash receipts of the holder or holders of the licence in question in relation to such licence area for such tax year.

[explanation of "C" of the formula amended by Act 24 of 1998]

(3) If in any tax year the amount determined in respect of the first accumulated net cash position, the second accumulated net cash position or the third accumulated net cash position, as the case may be, is expressed in a positive amount, such first accumulated net cash position, such second accumulated net cash position or such third accumulated net cash position shall, for purposes of determining the first accumulated net cash position, the second accumulated net cash position or the third accumulated net cash position, as the case may be, in respect of the succeeding tax year, be deemed to be nil.

[The word "accumulated" is misspelt in the Government Gazette, as reproduced above.]

(4) The year preceding the first tax year in relation to a licence area shall, for purposes of determining A of the formula referred to in subsection (2) be deemed to be a tax year in relation to such licence area and for such purposes the first accumulated net cash position, the second accumulated net cash position and the third accumulated net cash position at the end of such preceding year shall be deemed to be nil.

Liability for additional profits tax

- 20.** The additional profits tax shall be paid -
- (a) in the case of a person who is the sole holder of a licence or licences issued in respect of the licence area in respect of which such tax has been determined, by such person;
 - (b) in the case of persons who are joint holders of a licence or licences issued in respect of a licence area for the whole or any part of the tax year of such licence or licences, by such persons jointly and severally the one paying the other to be absolved.

Determination of additional profits tax

- 21.** The additional profits tax shall -
- (a) if the first accumulated net cash position is in respect of the tax year expressed in a positive amount, be determined at the rate of such percentage of such positive amount as may be determined in accordance with the formula -

Petroleum (Taxation) Act 3 of 1991

$$\frac{(56,5 - N) \times P}{(P - N)}$$

in which formula -

N, represents the rate at which petroleum income tax is leviable in terms of section 6 or 56,5 per cent, whichever is the lower;

P, represents 100 per cent,

or in the case of a production licence issued as provided in section 62(1)(b) and (2) of the Petroleum (Exploration and Production) Act, 1991, in accordance with the formula -

$$\frac{(51,25 - N) \times P}{(P - N)}$$

in which formula -

N, represents the rate at which petroleum income tax is leviable in terms of section 6 or 51,25 per cent, whichever is the lower;

P, represents 100 per cent;

[paragraph (a) amended by Act 24 of 1998]

- (b) if the second accumulated net cash position is in respect of the tax year expressed in a positive amount, be the aggregate of -
 - (i) the additional profits tax determined in accordance with the provisions of paragraph (a); and
 - (ii) such percentage of such positive amount as may be determined in the terms and conditions of the licence issued in respect of the licence area or, if no such percentage has been so determined, such percentage as may be determined by the Minister by notice in the *Gazette*; and
- (c) if the third accumulated net cash position is in respect of the tax year expressed in a positive amount, be the aggregate of -
 - (i) the additional profits tax determined in accordance with the provisions of paragraph (b); and
 - (ii) such percentage of such positive amount as may be determined in the terms and conditions of the licence issued in respect of the licence area or, if no such percentage has been so determined, such percentage as may be determined by the Minister by notice in the *Gazette*.

Modification of provisions of this Part in terms of agreements

22. Any provision of this Part which is modified by virtue of any term and condition contained in -

- (a) a petroleum agreement which provides for the modification of any provision of this Part in relation to -

Petroleum (Taxation) Act 3 of 1991

- (i) production sharing;
- (ii) participation by the National Petroleum Corporation of Namibia in exploration operations or production operations as provided in section 8(1)(a) or (b) of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991);

[paragraph (a) amended by Act 24 of 1998]

- (b) any agreement entered into between the holder of a licence and the Government which provides for the development of a discovery of petroleum in gaseous form,

shall apply in relation to the licence area to which it relates as it is so modified.

PART IIIA

TAX ON REFUNDS OF SURPLUS AMOUNTS IN TRUST FUNDS REFERRED TO IN SECTION 68D(3) OF THE PETROLEUM (EXPLORATION AND PRODUCTION) ACT, 1991 (ACT 2 OF 1991)

[PART IIIA, comprising section 22A, is inserted by Act 24 of 1998. The capitalisation and spacing in the heading of this Part is inconsistent with the rest of the Act.]

Tax on surplus amounts in trust funds

22A. (1) In the tax year in which decommissioning of facilities has been completed, there shall be paid for the benefit of the State Revenue Fund by the holder of a production licence in respect of whose production operations a trust fund has been established in terms of section 68B of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991), a tax on any surplus amount in such trust fund, comprising the aggregate of -

- (a) an amount determined by applying to such surplus the rate applicable to such holder in respect of petroleum income tax in terms of section 6; and
- (b) an amount determined by applying to such surplus amount, less the amount determined in terms of paragraph (a), the highest rate, as ascertained from the Permanent Secretary, of additional profits tax paid by such holder in terms of section 21 during the period during which such holder made annual contributions to that trust fund in terms of section 68B of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991).

(2) The Board of Trustees which is required to refund the surplus amount referred to in subsection (1) to the holder of a production licence in question shall, before so refunding such amount -

- (a) determine the amount payable by such holder in accordance with subsection (1);
- (b) deduct the amount so determined from such surplus amount; and
- (c) pay, on behalf of such holder, such amount over to the Permanent Secretary.

[section 22A inserted by Act 24 of 1998]

PART IV
Returns, assessments, objections and appeals,
payment and recovery of tax, representative taxpayers,
refunds and other miscellaneous matters

Application of provisions of Income Tax Act in relation to returns, assessments, objections and appeals, payment and recovery of tax, representative taxpayers, refunds and other miscellaneous matters

23. (1) The provisions of -
- (a) Part I, except sections 57, 58 and 61, of Chapter III;
 - (b) Parts II and III of Chapter III;
 - (c) Part IV, except section 85, of Chapter III;
 - (d) Part V of Chapter III;
 - (e) sections 94, 95(1), 96, 97, 98 and 99 of Chapter III,

of the Income Tax Act and Schedule 2 thereto and the regulations made thereunder, shall apply *mutatis mutandis* in relation to -

- (i) returns for assessment to be furnished by persons liable to taxation under the provisions of this Act;
- (ii) assessment of amounts chargeable in respect of tax leviable under this Act;
- (iii) objections to assessments and appeals against decisions of Permanent Secretary;
- (iv) payment and recovery of tax;
- (v) representative taxpayers;
- (vi) miscellaneous matters in connection with refunds of certain taxes, transactions or operations or schemes for purposes of avoiding or postponing liability for tax, offences and penalties, jurisdiction of courts of law and authentication and service of documents.

(2) The provisions of section 4 of this Act shall apply *mutatis mutandis* in relation to the provisions of subsection (1) of this section.

PART V
General provisions

Amendment of Act 24 of 1981

24. (1) Subject to the provisions of subsections (2) and (3), the provisions of the Income Tax Act are hereby amended -

- (a) by the substitution in section 1 for the definition of “mining operations” of the following definition:

Petroleum (Taxation) Act 3 of 1991

“mining operations” and “mining” include every method or process by which any mineral (**[including natural oil] excluding petroleum**) is won from the soil or from any substance or constituent thereof;”;

- (b) by the deletion in section 1 of the definition of “natural oil”;
- (c) by the insertion in section 1 after the definition of “person” of the following definition:

“‘petroleum’ means petroleum as defined in section 1 of the Petroleum (Exploration and Production) Act 1991;”;

- (d) by the deletion of subsection (4) of section 5; and
- (e) by the substitution in subsection (3) of section 36 for paragraph (a) of the definition of “capital expenditure” of the following paragraph:

“(a) expenditure on shaft sinking and mine equipment [**and, in the case of a natural oil mine, the cost of laying pipelines from the mining block to the marine terminal or the local refinery, as the case may be**]; and”.

(2) Any tax or other amount which, but for the amendments referred to in subsection (1) would have been capable of being levied, assessed or recovered and which has at the commencement of this Act not been levied, assessed or recovered, may be levied, assessed or recovered as if such amendments had not been effected.

(3) Notwithstanding the amendment of the provisions of the Income Tax Act in terms of subsection (1), such provisions shall continue to remain in force in respect of any person referred to in section 78(2) of the Petroleum (Exploration and Production) Act, 1991, until a date upon which a licence is issued to such person or any right referred to in that subsection has lapsed.

Short title and commencement

25. This Act shall be called the Petroleum (Taxation) Act, 1991, and shall come into operation on the date the Petroleum Matters (Amendment and Validation) Act, 1992 comes into operation.

[Section 25 is amended by Act 27 of 1992. Act 27 of 1992 came into force on its date of publication in the Government Gazette: 30 September 1992.

Section 3 of Act 27 of 1992 provides as follows:

“An act or thing purported to have been done in terms of the Petroleum (Exploration and Production) Act, 1991 or the Petroleum (Taxation) Act, 1991 before their commencement by virtue of sections 1 and 2, and that would have been lawful had the relevant Act been in operation at the time the act or thing was done, is hereby validated and declared to have been lawfully done.”]