Oil and gas taxation in Namibia
Deloitte taxation and investment guides

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Oil and gas tax guide

Tax professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Oil and Gas Tax Guides, an online series that provides information on tax regimes specific to the oil and gas industry. The Guides are intended to be a supplement to the Deloitte Taxation and Investment Guides, which can be found at www.deloitte.com/taxguides. For additional information regarding global oil and gas resources, please visit our website:www.deloitte.com/oilandgas

1.0 Summary

Namibia has several layers of taxation on upstream oil and gas activities. The most important taxes which apply to companies extracting oil and gas from Namibia and the Namibian Continental Shelf are:

• Corporation Tax ("PIT")	35%
• Additional profit tax ("APT")	three tiers depending on rate of return
• Value Added Tax ("VAT")	15% unless zero-rated
• Petroleum royalties	5%
• Withholding taxes:	
– Dividends	0%
– Royalties/ know-how payments	9.9%*
– Management and administration services	25%
– Consulting and technical services	25%

* Only applicable to realized capital gains. Unrealized capital gains are not taxed.

2.0 Corporate income tax

2.1 In general
Upstream oil and gas activities are taxed according to the provisions of the Petroleum Taxation Act. The normal income tax provisions therefore do not apply to such activities.

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PIT and APT are calculated in respect of income that accrues or is received from a license area and is calculated separately for each license area.

PIT will be calculated on the taxable income received by, or accrued to, or in favor of any person from a license area in connection with exploration operations, development operations or production operations carried out in any tax year in such license area. Such tax shall be paid separately for each concession area and is calculated at 35% on the aforementioned taxable income.

APT is charged on the after-tax net cash flow from petroleum operations in each license area. APT is only payable if the petroleum operations in a license area earn an after-tax real (i.e. inflation-adjusted) rate of return of 15%. The second and third tiers of APT become payable once the profitability level exceeds 20% and 25% respectively.

2.2 Rates
The rate for PIT is 35%.

2.3 Taxable income
Taxable income for petroleum activities is derived by deducting allowable expenses from "gross income" (see 2.4 below).

2.4 Revenue

Gross income is defined as:

- amounts actually received or accrued in or outside Namibia in respect of petroleum produced, saved, delivered and disposed of at arm's length sale;
- the fair market value of petroleum produced, saved, delivered and disposed of at non-arm's length sale; and
- the fair market value of petroleum produced, saved and appropriated for refining or other purposes.

Other prescribed amounts are also included in 'gross income' e.g. where petroleum is produced and sold but not delivered, insurance proceeds and the sale of petroleum information.

2.5 Deductions and allowances

The following deductions are allowed:

- any expenditure actually incurred in respect of every license area in the production of gross income in such license area excluding expenditure of a capital nature;
- repairs and maintenance (excluding improvements) of premises, machinery and other articles used for exploration, development or production;
- interest on borrowings employed in respect of the license area concerned;
- rental on land and buildings, plant, machinery and other items;
- wages, salaries and contributions to a fund/scheme approved by the Permanent Secretary of the Ministry of Finance in respect of any person employed;
- cost in respect of education and training of Namibian citizens at approved institutions;
- cost in respect of the provision of education and scientific material and equipment specified in a production license;
- royalties paid in respect of Petroleum Exploration Act;
- custom duties in respect of importation of movable equipment/materials;
- consumables used in the production, conveyance and storage facilities;
- general administration and management charges and bad debts;
- restoration and rehabilitation expenditure specified in terms of a license;
- all exploration expenditure incurred in the current year of production and prior to the year of production (which is the year in which petroleum is first sold). Prior to the first year of production such costs are accumulated and carried forward until the first year of production; and
- one third of all development expenditure incurred in the current year of production and prior to the year of production (which is the year in which petroleum is first sold). Prior to the first year of production such costs are accumulated and carried forward until the first year of production. The rest of the cost is deductible in each of the two ensuing tax years.

Where an expense is incurred in respect of more than one license area, the taxpayer should make a reasonable apportionment between the different license areas.

2.6 Losses

Losses may be carried forward to the succeeding year and can be carried forward indefinitely, provided trade is not ceased. Losses incurred in one license area may, however, not be offset against taxable income earned in another license area or against income from other operations i.e. the assessed losses per license area are ring fenced.

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2.7 Foreign entity taxation

The Petroleum Taxation Act does not contain provisions for foreign tax credits. However, most of the double tax treaties entered into by Namibia covers petroleum taxes and foreign tax credits, to some extent, and would therefore be available in terms of those treaties (if applicable).

3.0 Other corporate income tax

3.1 Additional profits taxes ("APT")

APT is levied on three cash flow positions (after normal tax) for the year concerned and is based on the "net cash receipts" for the year. "Net cash receipts" is the amount made up from gross income less deductible operating, exploration and development expenditure, and petroleum income tax payable for the year.

APT is a formula-based tax and is determined as follows:

(AxB) + C

A = the first/ second/ third net cash position of the tax year immediately prior to the tax year in question

B = if the net cash receipts are negative the amount needs to be adjusted by:

– 115% for the first position plus an inflation adjustment

– 120% for the second position plus an inflation adjustment less any APT on the first position

– 125% for the third position plus an inflation adjustment less any APT on the first and second positions

C = the first/ second/ third net cash position of the tax year in question

The determination of the tax rate is complex, but effectively it will be 25% in respect of the 'first accumulated net cash position' and a percentage set out in the production license in respect of the second and third accumulated net cash position, exceeding 25%.

4.0 Tax incentives

4.1 Research and development

No specific tax incentives are available for research and development.

5.0 Payments to related parties

5.1 Transfer pricing

All companies subject to Namibian tax are required to undertake their transactions with connected parties on an arms' length basis since September 2005. Namibia has adopted OECD guidelines on transfer pricing.

5.2 Thin capitalization

Any financial assistance by a non-resident that is a connected party to a Namibian borrower will be subject to thin capitalization rules. These rules enable the Namibian Revenue Authorities to determine whether a local company is thinly capitalized and interest charged on excessive debt may be disallowed as a tax deduction.

The Namibian thin capitalization provisions are silent on the accepted debt/equity ratio. The Namibian Reserve Bank requires a debt/equity ratio of 3:1 for exchange control purposes (i.e. any transactions between countries outside the Common Monetary Area (Namibia, South Africa, Lesotho and Swaziland)). In the absence of a specific ratio for tax purposes, this ratio is often used for thin capitalization purposes as well.

Any financial assistance by a non-resident that is a connected party to a Namibian borrower will be subject to thin capitalization rules.

5.3 Interest deductibility

Generally, subject to 5.1 and 5.2 above, interest paid on a loan will be tax deductible if the interest was actually paid and if the purpose and effect of the borrowing is to earn income. In other words, the purpose of the loan should be so closely linked to the income-earning operations of the borrower as to be regarded as part of the cost of performing its operations.

6.0 Transactions

6.1 Capital gains

Namibia does not impose capital gains tax and has no specific inclusion on the sale of petroleum rights or the sale of shares in companies that hold petroleum rights.

6.2 Asset disposals

Asset disposals may give rise to taxable capital gains and a recapture of capital allowances (tax depreciation). The allocation of consideration in sale and purchase agreements for asset disposals is important for taxation purposes for both seller and purchaser. This is because the allocation will determine capital allowances (tax depreciation) and the capital gains tax position between buyer and seller on the transaction.

6.3 Decommissioning trust fund

A license holder is required from the date when half of the estimated petroleum reserves have been produced to make annual contributions into a decommissioning trust fund. These annual contributions will be deductible in the computation of taxable income for both PIT and APT.

The Government of Namibia also reserves the right to ask certain licensees to arrange a Bank Guarantee where this is deemed to be in the national interest.

7.0 Withholding taxes

7.1 Dividends

There is no withholding tax on dividends made to non-resident shareholders where dividends are paid out of petroleum profits.

7.2 Interest

There is currently no withholding tax on interest payable by a non-financial institution to a non-resident person. Registered Namibian Banks and Unit Trusts need to withhold tax at 10% from any interest payable to a Namibian resident individual, Namibian trust or non-Namibian company.

7.3 Rents and royalties

There is no withholding tax on rental payments.

Petroleum royalty is levied at the rate of 5% of the market value of oil and gas produced and saved.

Namibia is also looking at introducing an export levy of between 0% and 2% on the export of inter alia oil and gas. This levy has not been promulgated as law yet, and the rate for oil and gas has not been finally determined.

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7.4 Services

Fees paid by a Namibian company in respect of director's fees, entertainment fees, administrative, managerial, technical, consulting or similar services rendered by a non-resident company to a Namibian resident person, will be subject to a 25% withholding tax.

The withholding tax rate may be reduced by an applicable double tax treaty.

7.5 Tax treaties

Namibia has concluded only 11 double tax treaties so far, most of which are based on the OECD model tax conventions and allowing for a reduction in withholding tax rates in many cases. The countries are:

- Botswana
- Germany
- Malaysia
- France
- India
- Romania
- South Africa
- United Kingdom
- Mauritius
- Russia
- Sweden

8.0 Indirect taxes

8.1 Value added tax, goods and services tax, and sales and use tax

VAT registration is required when an entity has a "taxable activity" in Namibia and if the value of that entity's taxable supplies exceeds N$200,000 for any 12 month period. A taxable activity is defined as:

"Any activity which is carried on continuously or regularly by any person in Namibia or partly in Namibia, whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for consideration."

Voluntary VAT registration is also possible, where a person does not exceed the N$200,000 VAT registration threshold yet, but where the person is expecting to exceed the threshold at some future point.

The standard rate of VAT is 15% and certain specified supplies of goods and services may be zero-rated. Where a registered person exports goods from Namibia, the sale will be subject to 0% VAT.

Import VAT is applicable and payable (at an effective rate of 16.5%) on all goods (movable items) imported into Namibia. Services provided from outside Namibia are only subject to 15% if the recipient of the service is using or consuming the service to make exempt supplies.

Import VAT is applicable and payable (at an effective rate of 16.5%) on all goods (movable items) imported into Namibia.

The VAT registered entity will be entitled to an input tax deduction in respect of any goods or services acquired that were subject to Namibian VAT, with a few exceptions, provided the company will use or consume those goods/ services in making taxable supplies. The company must substantiate the input tax claim with a valid tax invoice. Any import VAT paid on the importation of goods may also be claimed as an input VAT deduction provided the company will use or consume those goods/ services in making taxable supplies and provided the company paid the import VAT.

Input tax on goods or services must be claimed within three years of the date that the expense was accrued, otherwise the claim is forfeited. Input tax may also be claimed in a particular period without matching output VAT.

8.2 Import, export, and customs duties

Import VAT is applicable and payable (at an effective rate of 16.5%) on all goods (movable items) imported into Namibia. Customs duties are also applicable on the importation of goods from countries other than South Africa, Lesotho and Swaziland ("SACU"). Customs rates for imports from outside SACU will depend on the product classification.

8.3 Excise tax

The rate of excise duty applied to oil and gas products is determined by the classification of the product. In addition, products stored in an excise warehouse are afforded duty suspension, but become subject to the excise duty once removed for domestic use.

8.4 Stamp tax and transfer duties

Stamp duties are payable on the sale of shares at 0.2% of the value of the shares or consideration. Stamp duties of N$12 for every N$1,000 or part thereof of the value of any immovable property (including mineral rights) purchased by a company and trust. Progressive stamp duty rates apply for individuals purchasing immovable property.

Transfer duties of 12% of the value of any immovable property (including mineral rights) purchased by a company and trust. Progressive transfer duty rates apply for individuals purchasing immovable property.

8.5 License fees and training levies

Annual license area rental charges (which are tax deductible) are the rates that depend on the square kilometers of exploration area held during certain specified years, for example US$7 per square kilometers for the first four years, US$10 for the next two years, etc. The exact amount is usually determined in the Petroleum Agreement with the Namibian Government.

Annual training levies are also payable by license holders, and the amount is biddable and negotiable.

9.0 Other

9.1 Choice of business entity

Namibian operations could take the form of a subsidiary or an external company (i.e. a branch of a foreign company).

A Namibian branch and subsidiary are treated the same for tax with the main tax-related differences between a Namibian branch and subsidiary being:

Withholding tax on dividends

In the case of a branch no withholding tax on dividends ("NRST") is due when branch profits are remitted to its "head office". However, once the parent company declares a dividend to its shareholders, the proportion of that dividend that arose from Namibian originated profits is theoretically subject to Namibian NRST.

In the case of a subsidiary, NRST will be payable where dividends are declared to non-Namibian shareholders.

NRST is however not applicable where dividends are declared out of petroleum related profits.

Company annual duty

Company annual duty is payable in Namibia. Annual duties are calculated at N$4 for every N$10,000 or part thereof of issued share capital inclusive of share premium, with a minimum duty payable of N$80. This annual duty is payable annually in advance. In the case of a branch, annual duty is payable on the issued share capital including share premium account (if any) of the foreign company. In the case of a subsidiary the annual duty is calculated on the Namibian subsidiary's share capital and share premium. A Namibian subsidiary can be set up with a minimum share capital of N$4,000.

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10.0 Oil and gas contact information

Deloitte Southern Africa
Windhoek (GMT -1)

Deloitte & Touche
Jan Jonker Road
Windhoek
Namibia
Tel: + 264 61 285 5000
Fax: + 264 61 285 5050

Gerda Brand
Tax Director
Deloitte & Touche
Tel: +264 61 285 5062
Email: gbrand@deloitte.co.za

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