



**THE CHARTERED INSTITUTE OF  
TAXATION  
OF NIGERIA**

*(Chartered by Act No. 76 of 1992)*

**MEMORANDA TO THE NATIONAL ASSEMBLY  
ON THE PROPOSED PETROLEUM INDUSTRY BILL**

## **BILL REFERENCE: HB 159 - [EXECUTIVE] - C4533 - PART V111 - SECTIONS 414 TO 495 {FISCAL PROVISIONS**

### **SUMMARY OF RECOMMENDATIONS**

1. **Definitions.** Should be contained in only one section for ease of reference and avoidance of conflicting provisions. The definitions given to the Minister, Nigerian Company, Petroleum Operations in the two sections are different while some definitions such as upstream gas operations were simply duplicated.
2. **Accounting period** in section 494 with respect to the 'first accounting period' should be amended to include pre-production operating expenses that would not be included in schedule 2 and all those costs should be deemed to have been incurred on the first day of production.
3. **Assessable Tax - Harmonization of Crude oil Tax regimes.** Currently, there is Joint Venture, Production Sharing Contract, Service Contract and Sole Risk operations with different tax regimes. It is most appropriate that this robust reform harmonizes the regime into only one regime which is Production Sharing Contract in the nearest future. The Bill may contain provisions of how this is achieved over a period of time considering the time that the ongoing agreements expire. The importance of this is to relieve the government of the problem of cash call and also the contractors of delayed payment thereby making all parties comfortable with respect to funding.
4. **Single Tax Type with Inbuilt Progressive Element Tax System.** This simplifies the tax system and makes it more transparent. However, if there must be a dual tax regime, either tax must be deductible from the other or the aggregate tax must be within the highest tax rate proposed under the bill.
5. **Condensate.** Taxation should be made clearer where they are not spiked into the crude oil. There may be argument as to whether it should be taxed under crude oil regime or under gas regime. If not re-injected, it is more of gas nature and so we recommend that it be taxed under the gas regime.
6. **Intangible Drilling Costs.** Seems to be omitted from section 420. We recommend that this be revisited.

7. **Pension Cost** should be allowable automatically without further approval by the Board since pension is already governed by the Pension Act unlike in the past when there was no specific laws that governs pension.
8. **Investment Tax Credit and Investment Tax Allowance.** There was no mention of these in the Bill. We believe that there should be specific provision on how they should be treated especially when they are currently applicable under the existing Acts.
9. **Interest payable for late payment** should be more specific and certain and not let loose.
10. **Imprisonment Penalties** for both companies' officials and the revenue officials should be more specific to acts of wilful default and not in a simple civil error should they be subjected to imprisonment terms.
11. **All Schedules** especially the ninth schedule should be provided for comments.

**DETAILS OF THE CHARTERED INSTITUTE OF TAXATION OF NIGERIAS' POSITION PAPER  
TO THE NATIONAL ASSEMBLY ON THE PETROLEUM INDUSTRY BILL 2008.**

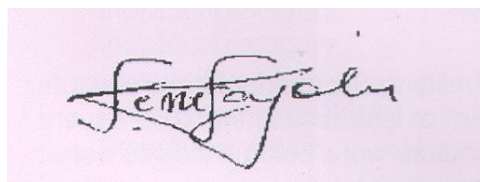
<b>ISSUES</b>	<b>PIB SECTION</b>	<b>KEY POINTS</b>	<b>POTENTIAL CHALLENGES</b>	<b>PIB PROVISION</b>	<b>PROPOSED PROVISION</b>	<b>RECOMMENDATION</b>
Definition	414 (1), 494	There are conflicting definitions of the same items and duplication of definitions.	There is potential problem of the administrators and taxpayers using different sections to support their positions leading to potential tax controversy.	414(1) & 494	494	The two sections should be merged into one Section ie section 494.  Current Section 414(2) to be the new section 414.
Federal Inland Revenue Service	416	Indicated as Federal Inland Revenue Department	Taxpayers may challenge the authority of the FIRS as not being the specific authority mentioned by the Act	416 line 17	416 line 17	The word 'Department' be changed to 'Service'
Charge to Tax	418 & 419	'From' was wrongly typed as 'nom'	For clarity and avoidance of ambiguity	418 & 419 lines 26, 28 , 6 & 8.	418 & 419 lines 26, 28 , 6 & 8.	'nom' to be corrected to 'from'.
Condensate	419	No mention was made of where condensate was not spiked into crude oil	Controversy may ensure between the tax authorities and the taxpayers in view of the different tax regime for gas.	419	Section 419 (d) to be introduced	To mention that where condensate was not re-injected into crude, it shall be treated as gas under upstream gas operations.
Intangible Drilling Costs	420 (h)	Omission of the word 'intangible' immediately after tangible	To avoid controversy.	420 (h)	420 (h) be amended	To read 'tangible and intangible costs'.

Pension costs	420 (j)	Allowable with the approval of the Board	Pension Act 2007 already allows pension costs as tax deductible.	420 (j) be amended	402 (j)	To require no further approval of the Board for pension while provident fund, or other society schemes be subject to the approval of the Board.
Reference to LFN 2004	426 & 429	An Act was passed in 2007 to ratify the 2004 Act and was referred to as 2007 Act.	To promote unity of reference	426 line 30 429 line 18	426 line 30 429 line 18	To refer to 2007.
Assessable tax	429	Contains rates for Joint Venture, Production Sharing Contract, indigenous companies with fifty thousand barrels,	Many regimes for taxing only one product	429	Phased rates to collapse into PSC rate over a period of expiration of the ongoing agreements of 5 years for the adjustment to be effective.	At this time of comprehensive and robust reform, it is suggest that all regimes be collapsed into only one regime possible over a period of time that all the existing agreements would expire. The recommended regime is the Production Sharing Contract. The benefit is that it is cash stress free for the government and recoup assurances to the contractor companies both local and foreign.

Investment Tax Credit and Investment Tax Allowance	431 - No mention was made except Petroleum Investment Allowance	There should be clarity as to it claim or otherwise except if they were mentioned in the schedule (we do not have the schedule at this time)	Clarity around Investment Tax Credit and Investment Tax Allowance is required.	431	431	Section 431 should be amended to state the position of the PIB Act with respect to these two allowances that have been controversial for some few years back.
Federal Inland Revenue Service Act , 2005	447	The Act was passed in 2007 and not 2005	Appropriate referencing	447 line 23	447	Federal Inland Revenue Service Establishment Act , 2007
Interest for late payment of taxes	457 (b) & 468 (1)	Subjects interest to Central bank of Nigeria minimum rediscount rate plus spread to be determined by the Minister.	Historically, Ministers have not issued such directive and it will be clearer if a certain specific rate is used to avoid negotiations between different officials and the taxpayers.	457 (b) & 468 (1)	457 (b) & 468 (1)	It is recommended that the additional rate to the CBN minimum rediscount rate be fixed at 2%.
Penalty for failure to deduct or remit tax within 30 days	468 (2)	Subject any director or officer of the company to jail terms without any option for failure to remit taxes deducted at source in addition to the penalty and interest payable.	This is too general and so many people may go to jail for simple act of omission for which penalty and interest is payable to compensate for the failure. We believe that the punishment should be limited to <b>“willful act of default”</b> by any director or officer of the company and not in the civil act of omission.	468 (2) – “The Director of officers responsible for the tax matters in a company that commits the offence in subsection 1 of this section shall	468 (2) – “The Director or officers responsible for the tax matters in a company that <b>wilfully</b> commits the offence in subsection 1 of this section shall be liable	We recommend that the word <b>“willfully”</b> be inserted into the section.

				be liable on conviction to imprisonment for a term of 3 years.”	on conviction to imprisonment for a term of 3 years.”	
Penalty for the Authorised officials of the government	469 (a)	Prescribes “200% fine or 3 years imprisonment terms or both for demanding more than authorised taxes due.	This is too general and needs to be qualified to exclude a situation where higher taxes than normal is demanded by the tax officials in the ordinary course of raising assessment. As it is, it suggests that where any officer raises an assessment that is more than what is authorized under the law, the officer would be guilty of an offence and may be imprisoned.	469 (a)	469 (a) by inserting at the end of line 16 the words” “who wilfully.....”	We recommend that the word “ <b>wilfully</b> ” be inserted into the section.
Accounting Period & contract Area	494	Does not contain treatment of pre-production expenses.  Does not contain definition of contract area.	There would continue to be negotiations outside the Act on the treatment of the costs.  PSC that contains definition has been repealed by virtue of section 478	494 (b)	By adding immediately after section 494 (b) the following phrase ‘and shall include all pre-production operating costs allowable under section 421 of this Act’.	It is proposed that the definition of accounting period be made to include all operating costs incurred pre-production.  Contract area should be defined in Section 494.

Ninth Schedule and all Schedules	Not available	Could not be reviewed.	-	-	-	Could not be commented on.
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**FEMI FAJOLU , FCTI**

The Registrar/Chief Executive

The Chartered Institute of Taxation of Nigeria

July 28, 2009