A LEGAL APPRAISAL OF PETROLEUM FISCAL REGIMES FOR THE PROMOTION OF INVESTORS CONFIDENCE IN THE NIGERIAN PETROLEUM INDUSTRY

By

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Abstract

The construction and lead of the worldwide investigation and creation industry have changed fundamentally throughout the long term; to the degree that the quest for and improvement of petroleum assets have gotten generally determined by the appeal of monetary systems as opposed to geographical perspective. In case there is an area of the Nigerian economy that has contributed altogether to income for the public authority, it is the oil and gas sector. This paper pointed toward inspecting petroleum monetary arrangements and advancement of financial backers' trust in the Nigerian oil industry. It adopted the doctrinal legal research methodology. The dissertation found that the petroleum fiscal regime has not assisted in promoting investors' confidence in the Nigerian petroleum industry and the Nigerian petroleum tax systems are organized to create greatest degrees of income for the state while likewise keeping up with measures to draw in unfamiliar venture. It suggested that the fiscal regime of the Nigerian petroleum industry should represent the long asset skyline of its stores and the public authority's monetary position ought to be reflected in the system through reformist financial places that grant the state to react to changing conditions because of variances in the cost of oil.

1.0 Introduction

The design and direct of the worldwide investigation and creation industry have changed fundamentally throughout the long term; to the degree that the quest for and improvement of petroleum assets have gotten generally determined by the allure of monetary systems as opposed to land forthcoming as it were. A dynamic and stable monetary game plan should now incorporate agreement terms and instruments that will energetically surrender a proper extent of financial rents to financial backers to ensure maintainable capital speculation stream for asset advancement. A high investigation hazard and low imminent area should offset government takes with an alluring pace of profit from speculation. Obviously, where investigation chances are low and topographical possibilities are high, the host government can be required to need to catch a high financial lease for every unit of hydrocarbon creation.[1]

In case there is an area of the Nigerian economy that has contributed essentially to income age for the public authority, it is the oil and gas sector. However, for more than forty years, this area has worked under outdated and regularly confused laws, for example, the Petroleum Act of 1969, the Petroleum Profits Tax Act (PPTA) and the Nigerian National Petroleum Corporation (NNPC) Act, among others. Eventually, the

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[1] O Iledare, 'Assessing the Impact of Fiscal Provisions in the Draft Petroleum Industry Bill on Offshore E&P Economics and Take Statistics in Nigeria' Nigeria Annual International Conference and Exhibition <https://onepetro.org/SPENAIC/procedures dynamic/10NAICE/All-10NAICE/SPE-136972-MS/108696> got to 28 May 2021

Petroleum Industry Bill (the PIB), was introduced to cater for every aspects of the business - the organizations, the financial system and local area worries, among others.[2]

As oil costs stay high and new oil fields are found, income created from the tax assessment from oil creation will keep on adding to the public spending plans and improvement goals of oil-rich African states, fundamentally. With high oil costs and expanded degrees of yield, the tax assessment from oil creation can give a steady wellspring of income for oil-rich African states, particularly as wellsprings of other homegrown income and outer wellsprings of accounts lessen. Tax assessment from oil creation can possibly give oil-rich African states, like Nigeria with the financing to assemble required public framework (like streets, medical clinics, and schools), and it might offer an approach to establish a climate that upholds more prominent monetary development and advancement in the state.[3] However, natural resources rents do not really lead to advancement or higher paces of financial development. The "asset revile" theory, as evolved by financial experts, assists with clarifying why many oil-creating states achieved slower economic growth and weaker development outcomes than other nations with a similar amount of even less resources.[4] According to the hypothesis, regular asset enrichments can be to a greater degree a revile to low and center pay non-industrial nations than a gift. The asset revile is characterized as a mix of hurtful monetary and political impacts, including "Dutch infection", which depicts the adverse consequence of the ascent of the worth of a country's money to non-extractive businesses. The asset revile has taken numerous structures in Africa; most striking have been the political impacts, which included elites taking economic rents with little accountability and governance oversight.[5]

Notwithstanding the dangers related with the asset revile, many oil-creating African states do not have the ability to investigate and deliver raw petroleum themselves. As an answer, they depend on their petrol monetary systems to accomplish two key targets: draw in venture from unfamiliar oil organizations to direct upstream oil creation; and expand the age of assessment income from this action for the state. Notwithstanding, these two goals innately struggle when oil-creating African states utilize monetary measures to draw in speculation, as they regularly do. Appealing monetary measures cut into the oil incomes oil-creating African states can augment for themselves. Thusly, the appropriate plan of the monetary system is key for oil-delivering African states to adjust these two clashing destinations and possibly advantage from developing degrees of oil creation.[6]

The exact blend of arrangements utilized fluctuates from country-to-country, as no two oil-delivering African states are something very similar – social and monetary conditions shift, including levels of advancement, financial variety, and the accessibility of expense income from different sources. As needs

[2] A Salami and F Oladoke, 'Knowledge: Nigerian Petroleum Industry Fiscal Bill – Encouraging Investment?' [2020] [1] *KPMG Nigerian Tax Journal*, 9

[3] *Ibid*

[4] C J Lundgren, *Boom, Bust, or Prosperity? Managing Sub-Saharan Africa's Natural Resource Wealth* (Washington, D.C.: International Monetary Fund 2013) 4.

[5] M H Khan, *Great Growth and Governance in* Africa (Oxford: Oxford University Press 2007); A Noman and Others, *Good Growth and Governance in Africa: Rethinking Development Strategies* (Oxford: Oxford University Press 2011) 115

[6] T Baunsgaard, 'A Primer on Mineral Taxation' International Monetary Fund Working Paper WP/01/139 September, 2001

be, an assessment system that is intended to meet the financial and advancement destinations of one state may not be reasonable for another. In this way, oil financial systems ought to be nation explicit and custom-made to the necessities and requests of individual states. Therefore, there is no diagram for oil financial systems that accomplishes the right harmony between charge income age and drawing in unfamiliar oil venture.

Currently, the Nigerian government uses a wide range of monetary instruments to administer oil creation. Sovereignties, asset lease charges, corporate personal expenses, and legally binding plans, for example, administration agreements and creation sharing arrangements are utilized to burden oil creation straightforwardly. Moreover, the Nigerian government utilizes charge incentives to further formulate its petroleum fiscal regime.

2.0 Legal Framework for Petroleum Fiscal Regimes in Nigeria

2.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The constitution is the establishment enactment for procurement of oil rights with the auxiliary enactment, guidelines and instruments instituted under it. Nigerian Constitution is the foundation upon which other statutes derive its validity and any irregularity with the Constitution delivers such arrangement or law "invalid and void to the degree of its irregularity. This is the matchless quality of the Constitution pursuant to Section 1 (3).[7] In *Trousseau Investment Ltd v Eyo*,[8] the court reiterated this position on the supremacy of the Constitution.

Area 44(3) of the Constitution of the Federal Republic of Nigeria vests the restrictive control, possession, and the board of oil and gas in the Federal Government and not to the State or Local Government where the oil and gas are arranged. This is on the grounds that the oil and gas assets are held in trust by the Federal Government in the interest of the residents of Nigeria for the general advantage and improvement of the country under the overarching law.

In *Attorney-General of the Federation v Attorney-General of Abia State and 35 others*, the Nigerian Supreme Court asserted the situation of Section 44 (3) and held that lone the central government has control and income rights over mineral assets created in the nation, despite the fact that the central government is relied upon to share the income to all unifying units as indicated by the relevant income distribution recipe. Nonetheless, it ought to be noticed that part 162 (2) of a similar Constitution accommodates the installment of at least 13% of the income building from such assets to the combining State in which the minerals are found.[9]

2.2 Petroleum Act, Cap P10, LFN 2004

The Petroleum Act is the principal enactment that manages oil and gas in Nigeria. Section 1 of the Act expresses that "the whole ownership and control of all oil in, under or upon any land in Nigeria is vested in

[7]Constitution of the Federal Republic of Nigeria 1999 (as amended) s 1(3)
[8] (2011) 6 NWLR (PT 1242) 195
[9] CFRN 1999 (as amended) s 162(2)

the State" which is the Federal Government of Nigeria. Section 1(2) additionally gives that the possession applies to all land (counting land covered by water), which is in Nigeria under the Nigerian regional waters, frames part of the mainland rack, or structures part of the financial zone of Nigeria.

Section 2 of Nigeria's Petroleum Act gives that, "[a] permit or rent … might be allowed uniquely to an organization joined in Nigeria under the Companies and Allied Matters Act or any comparing law." Under the Petroleum Act, there are three significant kinds of interests that can be conceded to oil organizations in particular investigation, prospecting and creation. In particular, oil exploration licenses (OEL) are non-selective licenses which are conceded for the lead of fundamental investigation reviews. An oil prospecting license (OPL), then again, is a selective permit allowed for more broad investigation overviews and incorporates the option to remove and discard oil found while prospecting.[10] The third sort of interest is the oil mining lease (OML) which is a rent that takes into account full scale business creation whenever oil is found in merchantable amounts in the predefined land. These concessions must be allowed to organizations joined under Nigerian law.[11]

The Act additionally concedes the Minister of Petroleum the ability to set up auxiliary guidelines for the oil and gas area. Under the Petroleum Act, Section 2 gives that the forces of the Minister incorporate among numerous the ability to give and deny licenses. Prior to a permit conceded is repudiated by the Minister, the Minister should advise the licensee regarding the justification for the disavowal and the permit holder will be welcomed for a clarification as per Section 25 of the Act.

The Petroleum Act expressly forbids the delegation of the powers to make regulations by the minister to another body. In *Attorney General of Bendel v Attorney General of the Federation*,[12] it has been held that every delegation of power from an executive body must be in accordance with the principal Act that conferred such power on the person delegating. In 2012, the Supreme Court in *NNPC and Attorney General of the Federation v FAMFA Oil Ltd.*[13] held that the Nigerian government should stick to the cycle cherished in the Petroleum Act and the Constitution when practicing its entitlement to take part in any oil square or well in the oil and gas industry. The stake by the Nigerian government in the Oil Mining License (OML) initially surrendered or conceded to FAMFA. The reason for the Court's decision was that the acquisition contradicted passage 35 and Section 44(1) of the Constitution.

2.3 Petroleum Profits Tax Act (PPTA), Cap P13, LFN 2004

The PPTA is the chief principal enactment administering the tax assessment from companies occupied with "petroleum operations" in Nigeria. Section 2 of the PPTA characterizes oil activities as:

> the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery,

[10]Petroleum Act, s 2(1) (b)
[11]Petroleum Act, s 2(2)
[12] [1982] ALL NLR 85
[13] [2012] 17 NWLR 148

> in the course of a business carried by the company engaged in such operations, and all operations incidental thereto and sale of or any disposal of chargeable oil by or on behalf of the company.

In light of this arrangement, oil and gas industry exercises that are not covered by the given definition are at risk of burden under the Companies Income Tax Act (CITA). Where a corporation's exercises are classified as "petrol tasks", the appropriate expense rate for such oil and gas company under the PPTA is further subject to the idea of the authoritative arrangement the company has with the national government. The terms of interest for oil and gas organizations are authoritative game plans which specify the rights and obligations of the gatherings. The state oil organization (NNPC) is the organization that arranges and goes into such legally binding concurrences in the interest of the central government and subsequently, is accused of the duty of offering impact to these authoritative arrangements. Instances of such authoritative arrangement are Joint Ventures (JVs), Production Sharing Contracts, (PSCs) and Service Contracts (SCs).[14] In any case, the JVs and PSCs are the most well-known sorts of authoritative plans utilized by upstream oil organizations and these two courses of action are responsible to burden under the PPTA.[15]

Only companies, that is, incorporated bodies that have separate legal personality within the formulation in *Salomon v Salomon*,[16] may be taxed under the Act. This is on the grounds that, in characterizing "petrol tasks", Section 2, discusses petrol exercises occupied with "by or in the interest of an organization" This development is built up by the arrangement of Section 22(1) which imposes criminal responsibility on "any individual (other than an organization) who engages in petrol activities either for his own, or together with some other individual or in association with some other individual, with the end goal of sharing benefits". It is vital that the Act characterizes "organization" as "any body corporate, joined under any law in power in Nigeria or somewhere else".

The chargeable benefit of the enterprise, subject to tax assessment, is dictated by the measure of its assessable duty for any bookkeeping period less the deductible use things or outgoings. The deductible costs incorporate among others; all non-useful rents, the obligation for which was brought about by the organization during the period. These are yearly leases offered in appreciation of oil prospecting licenses (OPLs) or oil mining leases (OMLs); all sovereignties, the liabilities of which were brought about by the organization in regard of locally expendable or chargeable oil for that bookkeeping period; all eminences, the liabilities of which were caused by the organization during that period in regard of unrefined petroleum or packaging head oil soul won in Nigeria; aggregates brought about via interest payable on capital utilized in completing oil activities; any cost caused for fix of premises, plant, apparatus or installations utilized in oil tasks or for restoration, fix of carries out, articles and utensils so utilized; commitments to a benefits, fortunate or other society, plan or asset; all totals, the responsibility of which was caused by the organization during that period to the central government or some other state or nearby government gathering in Nigeria

[14] Y Omorogbe, *Oil and Gas Law in Nigeria* (Lagos: Malthouse 2003) 38-54
[15] S C Dike and N Evo, 'Mainstreaming Oil and Gas Taxation Regime in Nigeria for Returns on Investment: Lessons from the UK' [2018] (2)(2) *African Journal of International Energy and Environmental Law*, 7
[16] [1897] AC 22 (H.L)

via obligation, customs and extract obligations, schooling charge (other than charge forced as petrol benefits by the PPTA) or some other expense, charge or other like charges.[17]

The PPTA contains arrangements which were clearly intended to rebuff the repudiation of its standards and to debilitate charge extortion. The significant offenses made by the Act, are contained to some degree 10, albeit different offenses are contained in different pieces of the Act. By Section 48(1), where an individual is blameworthy of an offense under the Act for which no punishment is in that given, the guilty party is responsible to a fine of N10,000. Where the offense is one under area 22(1) that is, participating in petrol tasks, either as an individual or an association, a further fine of N2,000 is forced for regularly during which the offense proceeds, and in default of installments, the guilty party is obligated to detainment for a half year. A similar rate will come upon any individual who neglects to give returns, specifics, records or archives needed by the Board or to keep appropriate books required.[18]

Hence, the plan of the Act is to burden the total of the worth of oil sold or arranged by an organization, or the benefit and gain emerging from or coincidental to oil activity. By and by, the Act has needed to fight with a few administrative issues, defilement, tax avoidance and ambiguities in its arrangements. The holes and ambiguities in the Act account for tax avoidance; the Act doesn't accommodate observing frameworks to identify and check wrongdoers; the fines payable are negligible and are insufficient obstructions; and it is additionally dependent upon dubious segments.[19]

3.0 Petroleum Fiscal Policies and Promotion of Investors' Confidence in the Nigeria's Petroleum Industry

The establishments of Nigeria's oil fiscals system were first set during the frontier time frame, when the British pilgrim organization gave two statutes – the Petroleum Ordinance of 1889, and the Mineral Regulation (Oil) Ordinance of 1907. Albeit the 1907 Ordinance specified that oil investigation was limited to British subjects and British-controlled organizations, the primary concession understanding was conceded to a German organization in 1908.[20] Investigation was ended when World War One started in 1914, and no further investigation was attempted in Nigeria until Shell D'Arcy Petroleum Development Company (the principal archetype of the cutting edge Shell Petroleum Development Company of Nigeria) was granted a concession award in 1938.[21]

The concession gave to Shell was an oil investigation permit covering the whole territory of Nigeria, which allowed Shell an early imposing business model on the investigation of oil. Shell made Nigeria's first business oil revelation in 1956 at Oloibiri Bayelsa State. Before long this revelation, other oil organizations, including Mobil and Texaco/Chevron, were conceded concession licenses to direct inland and seaward

[17] H Onyeukwu, 'The Incentives in the Fiscal Framework of the Nigerian MOUs With the International Oil Companies: Have the Objectives Been Achieved?' <http://works.bepress.com/cgi/viewcontent.cgi?article> got to 20 June 2021.
[18]PPTA, s 48(1)
[19] E O Ekhator, 'Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation' [2016] (21)(1) *Annual Survey of International and Comparative Law*, 43
[20]Omorogbe (n 13)
[21]*Ibid*, 274

investigation.[22] In any case Shell's initial investigation restraining infrastructure set it in the situation to rule oil creation in Nigeria. Today, the organization is answerable for 39% of oil creation in Nigeria.[23]

Nigeria's advanced oil financial system was set up in 1969 with the death of the Petroleum Act and the Petroleum (Drilling and Production) Regulations. The two bits of enactment give the legitimate system to oil creation in Nigeria. At its center is the vesting of oil in the state; Section 1(1) of the Petroleum Act specifies: "The whole proprietorship and control of all oil in, under or upon any terrains to which this part applies will be vested in the State." The Petroleum Act awards organizations joined in Nigeria the accompanying rights: "(a) a permit, to be known as an oil investigation permit to investigate for oil; (b) a permit, to be known as an oil prospecting permit to prospect for oil; and (c) a rent, to be known as an oil mining lease, to look for, win, work, divert and discard oil."[24]

Given its demonstrated oil holds that have prompted a strong and experienced petrol area, Nigeria's financial system has minimal in the method of measures reacting to socio-political issue that may disturb creation and hinder venture. One great representation is the contention in the Niger Delta.[25] A large portion of Nigeria's oil creation happens in the Delta, yet destitution and ecological debasement in the locale prodded long periods of contention. Gatherings living in the Delta disturbed politically for a more prominent portion of oil riches, and stretched out their mission to viciously interfering with oil creation by possessing and closing down oil offices, capturing the staff of oil organizations working in the district and taking hardware.[26] In spite of the savagery, the financial system did exclude measures to balance the effect of the contention.

Despite its comparatively strict fiscal regime, and the remnants of violence in the Delta region, Nigeria does not appear to be at risk of losing foreign oil investment.[27] Instead, the country has maintained steady levels of investment, which proposes the state has accomplished the harmony between its clashing advantages with the private area. Nonetheless, the state ought not take the presence of foreign oil firms for granted and ignore the importance of providing incentives to ensure continued investment, especially as new producers, like Ghana, emerge. As of now, Nigeria's oil benefits charge, asset rents, and eminences are among the absolute most elevated in oil-delivering Africa.[28] The regime also burdens investors with a number of other additional fees that are not present in other countries. Furthermore, incentives in the regime are now only limited to those available in the PPTA after the termination of the MOU scheme. Rather than reforming

[22]*Ibid,* 275
[23]*Ibid,* 275
[24]Petroleum Act, s 2(1)
[25] M A Ayoade, 'Nigerian Petroleum Profits Tax and Financial Incentives: 50-Year Requiem?' [2008-2010] (24) *University of Ghana Law Journal*, 172
[26]Ikelegbe A, 'The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria' [2005] (14) (2) *Nordic Journal of African Studies*, 208.
[27] E Whitehead, 'Nigeria Petroleum Bill: Still Causing Consternation' <http://blogs.ft.com/past brics/2013/11/21/nigeria-petrol charge actually causing-horror/>accessed 14 June 2021
[28]E M Sunley and Others, 'Income from the Oil and Gas Sector: Issues and Country Experience' in J M Davis and Others(eds.), *Fiscal Policy Formulation and Implementation in Oil-Producing Countries* (Washington, D.C.: International Monetary Fund 2003) 170

the regime so that it can help foster less dependence on oil revenue, the national government is instead proposing changes under the Petroleum Industry Bill ("PIB") to increase levels of oil revenue.[29]

4.0 Features of the Petroleum Fiscal Regime in Nigeria

This segment depicts the highlights of Nigeria's petrol financial system in more noteworthy detail.

(a) Petroleum Profits Tax

The Petroleum Profits Tax Act, Nigeria's present oil monetary resolution, was first presented in 1959. It oversees the tax collection from oil organizations working in Nigeria, including both nearby and unfamiliar oil makers. Assessment charged under the PPTA is identical to corporate personal duty charged to non-oil area organizations.

Section 8 of the PPTA specifies the arrangement for tax collection; it states, "There will be exacted upon the benefits of each bookkeeping time of any organization occupied with oil activities during that period, a duty to be charged, surveyed and payable as per the arrangements of this Act." The particular tasks caught by the PPTA are characterized in Section 2, which gives that "petrol activities" comprise of

> the triumphant or getting and transportation of petrol or chargeable oil in Nigeria by or in the interest of an organization for its own record by any penetrating, mining, extricating or other like tasks or interaction, excluding refining at a processing plant, over the span of a business carried on by the organization occupied with such activities, and all tasks accidental thereto and any offer of or any removal of chargeable oil by or for the organization.

Since the meaning of petrol activities rejects processing plant tasks, just upstream oil creation embraced by such makers as Total E&P Nigeria, Chevron Nigeria, Mobil Producing Nigeria, Nigerian Agip Oil Company, and Shell Petroleum Development Company of Nigeria fall under the PPTA.[30]

"Profits" is defined in Section 9, which stipulates

> (1) … the benefits of that time of an organization will be taken to be the total of:
>
> (a) the returns of offer of all chargeable oil sold by the organization in that period;
>
> (b) the worth of all chargeable oil discarded by the organization in that period; and

[29]Whitehead (n 25)
[30]Ayoade (n 23) 185.

> (c) all pay of the organization of that period coincidental to and emerging from any at least one of its oil activities.
>
> (2) For the reasons for subsection (1) (b) of this part, the worth of any chargeable oil so discarded will be taken to be the total of:
>
> (a) the worth of that oil as resolved, with the end goal of eminence, as per the arrangements of any order pertinent thereto and any monetary understanding or plan between the Federal Government of Nigeria and the organization;
>
> (b) any expense of extraction of that oil deducted in deciding its worth as alluded to in passage (a) of this subsection; and
>
> (c) any expense brought about by the organization in transportation and capacity of that oil between the field of creation and the spot of its removal.

Section 9 goes further and defines "adjusted", "assessable", and "chargeable" profits as

> (3) The changed benefit of a bookkeeping period will be the benefits of that period after the derivations permitted by subsection (1) of area 10 of this Act and any acclimations to be made as per the arrangements of segment 14 of this Act.
>
> (4) The assessable benefit of a bookkeeping period will be the changed benefit of that period after any derivation permitted by area 20 of this Act.
>
> (5) The chargeable benefits of a bookkeeping period will be the assessable benefits of that period after the derivation permitted by area 20 of this Act.

The deductions available through Sections 10 and 14 include "rents for lands or buildings…; non-productive rents; royalty paid; administrative expenses; and capital expenditure such as tangible or intangible expenses from the appraisal of an investigation well and next two examination wells."[31] Section 14 deductions "concern the exclusion of income generated from the transportation of chargeable oil from maritime oil big haulers worked by or for the oil delivering organization from Nigeria to another overseas destination."[32] The deductions permitted under Section 20 are recorded in the Second Schedule of the Act, which lists the available allowances. Section 20 sets a cap on allowances to the lesser of either the aggregate amount computed under Section 20(2) or on the other hand "an aggregate equivalent to 85% of the

[31] PPTA, ss 10 and 14
[32] *Ibid*, s 14

assessable benefits of the bookkeeping time frame less 170% of the aggregate sum of the derivation permitted as oil venture stipend registered under the Second Schedule."[33]

As of now, charge under the PPTA is determined at 85% of chargeable benefits. New oil organizations, nonetheless, are charged a pace of 67.5% for the initial five years of creation, and 85% thereafter.[34]

(b) Resource Rents and Royalties

Notwithstanding the oil benefits charge, the Nigerian public government necessitates that oil organizations pay both asset rents and royalties. The individual arrangements are Sections 60 and 61 of the Petroleum (Drilling and Production) Regulations 1969. Segment 60 partitions asset rents into two classes – those paid on a current oil investigation permit, and those payable on an oil prospecting permit or oil mining lease. A base lease of NGN 500 is required yearly for consistently an investigation permit is in power. Yearly leases payable on an oil prospecting permit are USD 10 for each square mile; for a mining lease, the rents payable are USD 20 for each square kilometer of the initial ten years of the rent, then, at that point USD 15 for the rest of.[35]

Royalties in Nigeria are charged at a rate for every centum dependent on the chargeable worth of unrefined petroleum delivered under a permit or rent. The rate charged changes as per the area or spot of creation (inland versus seaward), and the profundity of water in the space of creation. Presently, royalties are charged at: 20% for inland regions; 18.5% in regions up to 100 meters water profundity; 16.5% in regions up to 200 meters water profundity; 12.5% in regions from 201 to 500 meters water profundity; 8% in regions from 501 to 800 meters water profundity; 4% in regions from 802 to 1000 meters water profundity; and 0% in regions past 1000 meters water profundity.[36]

Section 62 of the Regulations records the sovereignties charged as a feature of coastal and shallow seaward creation sharing agreements. The rates are just marginally lower than those recorded previously. For coastal agreements, the rates are 5% for creation under 2000 bpd, 7.5% for creation between 2000 to 5000 bpd, 15% for creation somewhere in the range of 5000 and 10 000 bpd, and 20% for creation over 10 000 bpd. Offshore contracts are similarly scaled like the onshore contracts based on level of production, beginning at 2.5% for production below 5000 bpd in water depths up to 100 metres, and 1.5% for production below 5000 bpd in water depths between 100 and 200 metres. However, a discounted rate is not charged for the highest levels of production – firms operating under production sharing contracts are not at an advantage. The royalty rates for production sharing contracts are almost equivalent to the rates charged against non-production sharing projects: 18.5% and 16.67% for under 100 meters in water profundity and between 100 to 200 meters in water profundity, separately.[37]

[33] *Ibid*, s 20(2)
[34] Ayoade (n 23) 187
[35] Petroleum (Drilling and Production) Regulations, 1969
[36] *Ibid*, Regulation 61(1)(a)
[37] Petroleum (Drilling and Production) Regulations 1969, Regulation 62

Royalties can potentially impact a company's decision to invest because of their impact on profitability.[38] This effect depends on the rate charged, specifically if the future level of the royalty is lower than the current value as it makes extracting tomorrow more attractive than commencing production today. Royalties can also impact a company's decision to continue operations, particularly in circumstances when oil prices are too low to cover both the costs of extraction plus the royalty.

(c) Additional Fees

Nigeria's petroleum fiscal regime also includes a number of one-time fees: signature bonus at the completion of a successful bid; production bonus (generally limited to instances where a production sharing agreement is in place); various application fees for licenses or other applications; terminal dues (which are meant to facilitate the "evacuation of oil from export terminals");[39] and the commission paid to the Central Bank on charges under the PPTA, sovereignties, and rents to the unfamiliar trade records of the Bank and government charge specialists.[40]

(d) State Participation

State cooperation is likewise another critical segment of Nigeria's oil monetary system. The push for the Nigerian government to partake in the oil area started in 1969 when the then Ministry of Finance gave a Fact Finding Mission Report that featured the significance of state interest in the business around then. In addition to other things, the report underlined "the requirement for efficient renegotiation of organization arrangements to give the express a unified interest."[41] As per the report this was best accomplished through the advancement of an "coordinated, orderly methodology for interest." Supporters of state cooperation kept upholding for the arrangement until 1971, when their endeavors were buttressed by Nigeria's increase to the Organization of the Petroleum Exporting Countries ("OPEC"). A focal strategy of the Organization is state cooperation in the oil area. That very year, the Nigerian National Oil Corporation ("NNOC") was set up.[42]

The NNOC's initial mandate was "to take part in prospecting for mining and advertising oil and in any remaining exercises with the oil industry."[43] The first six years that the NNOC was in operation were tumultuous as conflicts arose among it and the government service answerable for the Corporation, the Ministry of Mines and Power. The force battle between the Corporation and the Ministry brought about the NNOC being basically defective; to end its ineffectualness, the public government blended the Ministry into the NNOC to make the Nigerian National Petroleum Corporation ("NNPC") in 1977.[44]

Prior to the creation of the NNPC, however, Nigeria's government undertook a number of key policy objectives through the NNOC. First, it was able to negotiate equity participation agreements of 35% with

[38] R Boadwayand M Keen, *Theoretical Perspectives on Resource Tax Design'*(New York: Routledge 2010) 13
[39]Ayoade (n 23) 194
[40]*Ibid*, 192-94
[41]*Ibid*
[42]Ayoade (n 23) 276
[43]Omorogbe (n 13)
[44]*Ibid*

Elf, Shell-BP,[45] Mobil, and Gulf concessions. The public authority likewise allocated to the NNOC in 1972 "all regions in the country not covered by existing licenses and rents, [as well as] concession regions… held by the oil organizations which may be given up every once in a while", and halted issuing any new concessions.[46] From then on, the state-owned oil company was lawfully allowed to go into agreements or associations with private oil organizations. Thus, Nigeria's interest in the oil area comprises of joint endeavors, creation sharing arrangements, and administration contracts.

Nigeria's joint venture contracts include provisions to address: the level of participation; the ownership of production facilities and assets; and the interests and obligations of each party.[47] In all agreements at least one of the parties is designated the "operator", which happens to be the foreign oil company in all of Nigeria's joint ventures. Notwithstanding, the NNPC maintains whatever authority is needed to turn into an administrator in the event that it so decides.[48]

(e) Incentives

Nigeria's oil monetary system has a set number of motivating forces for oil organizations. Generally, the essential motivations instrument was the Memorandum of Understanding ("MOU") that was gone into between the public authority of Nigeria and its joint endeavor accomplices. It gave motivating forces to joint endeavor accomplices in return for certain work responsibilities. It was an action extraordinarily utilized by Nigeria and not seen in other oil-creating states. The MOU arose during the 1980s as a reaction to the decrease in oil costs and the ascent in expenses of creation. The Nigerian specialists fostered the action with an end goal to invert declining levels of investigation and creation that diminished assessment incomes.[49] Despite being developed in response to industry conditions at the time, the MOU was renewed and revised in 1991, and again in 2000. While the literature and Nigerian government sources are conflicting, it appears the Nigerian government cancelled the 2000 MOU without replacing it in 2007, leaving a gap in the incentives structure that may detrimentally impact of new foreign oil investment.[50]

Incentivizing deductions available to oil companies are restricted to those in the PPTA. Although the PPTA does not limit an oil company's deductions to a particular project, it is critical to take note of that creation sharing arrangements do ring-fence allowances on an undertaking to-project premise. In its implementation of the conflicting fiscal instruments, the Nigerian government prefers the terms of the contract to those in the statute.[51]

Despite the application of ring-fencing to petroleum operations, oil companies can apply deductions available in the PPTA broadly as an aftereffect of legal understanding of the expression "petrol tasks." In

[45] Shell-BP succeeded the Shell D'Arcy Petroleum Corporation before it turned into the cutting edge Shell Petroleum Improvement Company of Nigeria
[46]*Ibid*
[47] NNPC, 'Joint Venture Operations'<http://nnpcgroup.com/NNPCBusiness/UpstreamVentures.aspx> accessed 18 June 2021
[48]*Ibid*.
[49]Ayoade (n 23) 196
[50]E Oshionebo, 'Financial Regimes for Natural Resource Extraction: Implications for Africa's Development' [2018] [9] *Journal of Human Right and the Environment*; 206
[51]Ayoade (n 23) 190

1996, the Supreme Court of Nigeria upset a choice by the Federal Board of Inland Revenue (the antecedent to the current government charge organization, the Federal Inland Revenue Service) that disallowed deductions submitted by Shell. The company submitted "unfamiliar trade misfortunes, Central Bank commissions and instructive grant costs" as allowances. The Supreme Court held that Shell was qualified for deduct each of the three classes in the computation of its last charges owing on the grounds that "they were 'coincidental to petrol tasks' and were 'completely, only, and essentially' brought about for this reason." The Court's ruling expanded the scope of deductions available to oil companies by permitting the inclusion of any "legal or authoritative commitment to cause a cost", in any event, when that cost isn't straightforwardly identified with its petrol activities.[52]

A tax holiday is another component of Nigeria's incentives structure, although its application in the oil sector is restricted. The Nigerian Investment Promotion Commission offers tax holidays to companies that qualify for "pioneer status", which limits its availability to the first year that a company commences production otherwise the application is time-barred.[53] Qualifying foreign corporations must also have incurred capital expenditures of at least NGN 5 million.

(f) The Petroleum Industry Bill

The Petroleum Industry Bill (PIB)[54] is a law in the making which seeks to introduce far-reaching reforms in the fiscal regime of Nigerian oil and gas industry. It was first presented to the National Assembly in 2008 and has since then undergone numerous revisions as well as intense debate from stakeholders. Recently, on 1st day of July 2021, the PIB was passed for final reading by the National Assembly and presently anticipating official consent. The significant target of the PIB is to establish good governance, best practices and ease of doing business in the industry by clarifying roles and responsibilities of officials and institutions, enable frontier exploration, mandate improved environmental compliance and transform the NNPC into a commercially viable enterprise[55]. The bill is necessary because almost all petroleum related laws including the Oil Act of 1969 and the Petroleum Profit Tax Act of 1959 had gotten late for quite a long time. The PIB proposes the Upstream Regulatory Commission for upstream operations wherein oil exploration license shall be granted for a time of three years and sustainable for an additional three endless supply of recommended conditions. The PIB additionally accommodates Midstream and Downstream Regulatory Authority for halfway and downstream tasks. The PIB further provides for Host Communities Development Trust Fund whereby the oil operators described as settlors will make an annual contribution of 3% of their yearly operation expenditure to the Host Communities.

It is now certain that the PIB will become an Act in no distant time. It is hoped that it will bring about the restructuring of the institutions, attract and boost the confidence of local and foreign investors, upgrade responsibility and straightforwardness in the financial system of Nigeria's oil and gas industry.

[52]*Shell Petroleum Development Corporation v FBIR* (1996) 8 NWLR (PT 466) 256
[53] Investment Incentives <http://www.nipc.gov.ng/investment.html> accessed 16 June 2021
[54]Petroleum Industry Bill, 2020
[55]U Akpan, 'Explainer: 10 Things to Know About the PIB', *Vanguard Newspaper* (July 1 2021).

5.0 Key Problems of the Petroleum Fiscal Regime in Nigeria

Monetary system in Nigeria is confronted with various issues going from intricacy of duty laws, absence of progress of the limit of expense organization and its advertising, helpless advances framework and issue of self-evaluation. There is likewise the issue of requirement. In the accompanying areas, the exposition looks at on every one of the issues and sources explicitly on Nigeria.

Complexity of Tax Laws

Fernald featured the hardships in charge organization when he composed as follows:

> …under existing conditions, laws and approaches we can't anticipate great assessment organization… in wild scramble we instituted one income law after another; each deficient and requiring retroactive changes; each outdated before we got the incomes from it, or even before Treasury guidelines under it were given … we face certain highlights of law and strategy which have made, and will keep on making, great expense organization unimaginable.[56]

Fernald went further to say that "to have a very much controlled assessment framework, the expense law and its application ought to be sensibly understandable to the individuals who order it, to the individuals who are to regulate it and to the individuals who are to make good on the charges. In instituting charge laws, too little consideration has been given to managerial perspectives.

A complex tax regime like that of Nigeria may forecast significant expenses for both assessment organization and citizen. The expenses of the assessment framework are typically communicated as a level of all out charge income. It is viewed as that the lower the expenses the better for the duty organization. Binniyat provided details regarding a location by the then Minister of Solid Minerals, Dr. Oby Ezekwesili who uncovered that "practically all Nigerians have no clue about how profit from oil and gas are shown up toward the year's end. This is a result of the apparently perplexing framework of duties, specialized terms and different languages utilized in the calculation of the factors that summarize to conclusive oil income".

The current PIB awaiting presidential assent which has been viewed as the messiah that will bring the desired reform in the industry is not without complexities. Albeit, the PIB in its present status gives the genuinely necessary lucidity and motivating forces in certain perspective, yet could tragically prevent financial backers because of its intricacies on expansive limitations in the deductibility of substantial working costs . Ensuing to the order of the Bill, the new financial system will just begin to apply to organizations effectively in, endless supply of existing OML and OPL or execution of new ones. Thus, the PPTA will keep on applying to OMLs and OPLs acquired before the sanctioning of the PIB, until they are restored. More work should be done especially in such manner, as there is currently serious assessment contest between nations to draw in financial backers.

[56] H B Fernald, 'Problems of Income Tax Administration' [1945] (80) *Journal of Accountancy*, 342

Oil and gas business is an exceptionally perplexing business, extremely complex with a ton of elements implanted into it, a ton of details included, not very numerous individuals are knowledgeable in it, regardless of whether you are knowledgeable in the specialized side of the business, it might in any case not be similar discussing the financial issues. For a long while, citizens in Nigeria have, generally, been wrestling with obsolete duty laws. Be that as it may, with current assessment changes, things might be going to change.

Poor Appeals System

The issue of the allure interaction is that administration doesn't initiate the allure body. The allure strategy is there, however they don't establish the Body of Appeal Commissioners for quite a while. The PPT Act permits an individual who is aggrieved by an evaluation made upon him, and has neglected to concur with the FIRS on the appraisal, to engage the Appeal Commissioners, by giving 30 days' notice, recorded as a hard copy, after the endless supply of notice of refusal of FIRS to alter the evaluation. There is a right of allure "to the Federal High Court after pulling out recorded as a hard copy to the Board inside thirty days after the date whereupon such choice was given".[57]

The PPTA recommends certain offenses and punishments which incorporate duty due and not paid inside specified time, offering false expressions, inability to retain or transmit charge deducted and blundering charge authorities. Omoigui affirmed that there has been a revitalization of the Body of Appeal Commissioners to accomplish "swifter regulation of corporate duty matters".[58]

Self-Assessment

In empowering charge consistence, Governments have utilized self appraisal as a mode for income age. With the new presentation of self-appraisal framework, questions have been asked regarding whether self-evaluation will deteriorate the capacity of FIRS to gather oil benefits charge incomes or further develop it.

Binniyat wrote about the extractive business in Nigeria that the DPR "permitted upstream organizations to utilize boundaries that fit them to pay what they considered fit as sovereignty to Government in this way making underpayments". The oil organizations may participate in more complex practices to stay away from charge obligation, while agreeing with the arrangements of the law; they may misuse provisos in the law. The FIRS authorities, as of now, may not be a counterpart for the oil organizations' authorities (that is, the citizens) as far as methodology, power, level of power and specialization. This may almost certainly put the oil organizations' authorities at an intrinsic benefit over the assessment authorities.

6.0 Strengthening Nigeria's Petroleum Fiscal Regime: Lessons from the United Kingdom

The degree to which a nation draws in interest in the oil and gas industry is controlled by numerous components, for example, (I) international security and government strategy; (ii) size and nature of stores; (iii) ability of NOC; (iv) request negativity and oil costs and (v) monetary frameworks. Most IOCs give

[57]PPTA, s 42(1)
[58] I Omoigui, 'Policy and Thrust of Tax Reform Bills' *Business Day* (Wednesday, 10 May 2006) 11

more accentuation to financial frameworks than other deciding components.[59] The financial system for oil and gas organizations in Nigeria (Petroleum Profit Tax (PPT), which applies to Joint Venture (JV) contracts and the Production Sharing Contracts(PSC) requires fortifying taking into account its developing significance in the area. As per the National Tax Policy on charge, all partners should uphold the new drives to change the Oil and Gas area by the entry of the Petroleum Industry Governance Bill, which is proposed to address all spaces of worry in the area.

To guarantee straightforwardness and responsibility, all organizations of Government accused of the organization of the oil and gas area and assortment of oil and gas incomes including the Nigerian National Petroleum Corporation (NNPC), Federal Inland Revenue Service (FIRS) National Petroleum Investment Management Service (NAPIMS) and Directorate of Petroleum Resources (DPR), should share data on normal premise to upgrade oil and gas incomes and expense consistence in the business. Also, steps ought to be taken towards the codification, all things considered, and arranges pertinent in the oil and gas area. The Petroleum Industry Bill (PIB) initially was imagined in 2008 as an exhaustive authoritative system to accomplish a central change of the oil and gas industry in Nigeria.[60] The PIB was intended to consolidate all existing petroleum laws (about 16 of them, including tax laws), introduce new provisions and update the regulations governing the industry in keeping with changes in the global oil and gas sector.[61]

The PIB has been portrayed as the most outstanding among the inevitable changes in Nigeria's oil industry. For example, a few partners have alluded to this bill as the "most legitimate piece of enactment that would upgrade the petrol business" while others have depicted it as Nigeria's first significant endeavor at oil and gas changes since the beginning of oil investigation.[62] This bill is relied upon to acquaint generous changes with the Nigerian oil and gas monetary system. For example, the momentary arrangements of the bill is set to revoke certain central petrol rules including the Petroleum Act and the Petroleum Profit Tax Act to solidify Nigeria's petrol laws.[63]

As well as canceling these Acts, a portion of the other duty related changes proposed in the PIB incorporate a presentation of a self-evaluation system for upstream organizations and a supplanting of the PPT with Nigerian Hydrocarbon Tax (NHT). For example, Sections 299 and 313 of the bill forces NHT on benefits of any organization occupied with upstream activities at the pace of "half for coastal and shallow water regions"; and "25% for bitumen, wilderness acreages and profound water regions" during each bookkeeping period.[64] Where an organization's petrol tasks falls in both coastal and profound water topographical regions that are dependent upon various assessment rates (half and 25%), then, at that point, the NHT is to be required on the proportionate pieces of the benefits emerging from such activities. Notwithstanding the

[59] S Saidu and A R Mohammed, 'The Nigerian Petroleum Industry Bill: An Evaluation of the Effect of the Proposed Fiscal Terms on Investment in the Upstream Sector' [2014] (2)(2) *Journal of Business and Management Sciences*, 45-57
[60] L Ogunsola, 'Worldwide Oil and Gas Newsletter: Nigeria Petroleum Industry Bill' <www.deloitte.com>accessed 19 June 2021.
[61]*Ibid*
[62]Sahara Reporters <http://saharareporters.com/2018/03/29/stakeholders-speak-petroleum-industry-governance-bill-makes-way-buharis-table>accessed 19 June 2021.
[63] The Petroleum Industry Bill 2008
[64]*Ibid*, ss 299 and 313

presentation of the NHT, the PIB likewise proposes to make upstream organizations responsible to burden under the CIT at the pace of 30%.[65]

By suggestion, the PIB proposes to supplant Nigeria's present single level expense framework (PPT) material to upstream organizations with a two-level duty system (NHT and CIT). The PIB bill having been passed for conclusive perusing at the National Assembly, it is trusted that the arrangements of the PIB will be enough to stimulate the desired investment though it has not addressed the issue of energy transition from fossil fuel to renewable energy. However, it is only when the new Bill has been assented to by the President that meaningful analyses can be carried out by in its fiscal provisions.

7.0 Conclusion

There are numerous significant issues which could be viewed as when examining the Nigerian oil industry. There is the very much recorded political strain between the oil delivering states and the national government, coming about because of a disappointment by the central government to guide adequate oil incomes to the states. There is the awkwardness of over between the IOCs and the public authority of what is still, after such a long time, a non-industrial nation. There is the work of art "conundrum of bounty" portrayed by an inability to accomplish monetary improvement in spite of, or maybe on account of plenitude of regular asset riches and immature economy.

Estimated by the commitment to public expense income, petrol incomes are not critical in the asset base of the United Kingdom. Conversely, petrol income establishes the single biggest commitment to Nigeria's income. The degree of complexity of the significant government offices and the duty authority is critical in the choice of a suitable oil financial framework. For instance, the framework embraced by the UK as talked about in the past part, is a sovereignty/charge framework worked on a field by field premise. This requires a significant degree of skill with respect to the state to execute and authorize it. An agricultural nation may discover its administration authorities are no counterpart for the exceptionally prepared staff of the International Oil Companies, whose figures they should review. Such a nation may come up short on the foundation to direct and uphold a sovereignty/charge framework.

In every country (that is, Nigeria and the UK), the oil monetary framework has changed by the developing of the oil and gas saves and as indicated by shifts yet to be determined of force between the legislatures and the IOCs. Albeit the relaxed spectator may anticipate that the Nigerian system should have grown to some degree aimlessly, given the steady political disturbances and the proceeding with challenges with debasement and botch of the oil incomes, this framework has created similarly as the UK framework. The fundamental contrast has been the any longer delays in the Nigerian framework. The transition to PSCs could likely have been made a whole lot sooner and the motivating forces to the IOCs to abuse the gas saves were unquestionably given very late.

[65]Petroleum Industry Bill 2008, s 353 (1)

8.0 Recommendations

From the discoveries of the exposition, the accompanying proposals are made:

i. As a mature oil industry, Nigeria's petroleum financial system should represent the long asset skyline of its stores. Assessment rates can be attached to the length of an undertaking, and motivating forces acquainted modestly all together with empower any new speculation and oil discoveries as existing wells deplete.
ii. Creation of Sharing Contracts, which involve no state financing, will take care of the subsidizing issue regarding new licenses. Selling down a piece of NNPC's value advantages in licenses could decrease future financing commitments to more reasonable levels and delivery assets for different employments. Nigerian government should ensure any participation in its oil sector is advantageous. This may include reforming current creation sharing arrangements or entering various sorts of arrangements, for example, administration contracts.
iii. The public authority's monetary position ought to be reflected in the system through reformist financial places that grant the state to react to changing conditions because of variances in the cost of oil. There ought to likewise be a stable monetary framework. A stable monetary system needs to guarantee a decent amount of profits among industry and government currently as well as for quite a long time to come, during which time costs and costs will keep on differing. On the off chance that the monetary system is to be versatile to changing conditions and stay fit for reason, it should have some level of adaptability or probably there will unavoidably be periods when the business may either be making benefits that are believed to be inordinate, or battling to make any benefit whatsoever.
iv. Drawing lessons from the United Kingdom, the Nigerian government should make a straightforward and predictable way to deal with strategy making, connecting completely with citizens in the improvement of strategy and simplify the tax laws to ensure that taxpayers understand the language clearly.