

PETROLEUM TAXATION LAW

**NATIONAL ASSEMBLY
OF SAO TOME AND PRINCIPE**

Law No. 15/2009

CHAPTER I General Provisions	3
Article 1 (Short Title).....	3
Article 2 Definitions	3
Article 3 (General Dispositions)	7
CHAPTER II Scope of Application.....	7
Article 4 (Territorial Scope of this Law)	7
CHAPTER III Petroleum Fiscal Regime.....	8
Article 5 (Taxation of Authorized Persons, Associates etc.)	8
CHAPTER IV Income Tax.....	8
Article 6 (Rate of Tax and Exclusion)	8
CHAPTER V Taxable Profits	9
Article 7 (Profits)	9
Article 8 (Gross Receipts).....	9
Article 9 (Deductible Expenditure).....	10
Article 10 (Interest Deduction)	16
Article 11 (Allocation of Head Office Expenditures).....	16
Article 12 (Decommissioning Reserve Fund and Decommissioning Expenditure)	16
Article 13 (Other Non-Deductible Expenditure)	17
Article 14 (Limitation on Deductions).....	17
CHAPTER VI Transfers	18
Article 15 (Transfer of Interest in Petroleum Operations).....	18
CHAPTER VII Payment of Tax	18
Article 16 (Withholding Tax)	18
Article 17 (Dividends)	19
Article 18 (Installments of Tax).....	19
CHAPTER VIII Final Provisions	21
Article 19 (Regulations).....	21
Article 20 (Entry into Force and Application).....	22

Petroleum Taxation Law No. 15/2009

CHAPTER I General Provisions

Article 1 (Short Title)

This Law may be cited as the "Petroleum Taxation Law."

Article 2 Definitions

For the purposes of this Law:

1. "**Affiliate**" means, in respect of an Authorized Person (or, if more than one (1) Person, in respect of each of such Persons), a Person that Controls, is Controlled by, or is under the common Control with, the Authorized Person or any one of such Persons, as the case may be;
2. "**National Petroleum Agency**" means the agency of the State established by the State's Decree - Law No. 5/2004, of the 14th of June, which is responsible for the regulation and supervision of Petroleum Operations or any agency which succeeds the National Petroleum Agency with respect to some or all of its powers;
3. "**Fiscal Year**" means the period of twelve (12) months commencing 1st of January and ending on the following 31st of December according to the Gregorian calendar;
4. "**Authorized Area**" means the area from time to time the subject of an Authorization;
5. "**Associate**" means any Affiliate, subcontractor or other Person associated with an Authorized Person in the conduct of Petroleum Operations;
6. "**Authorization**" means a Petroleum Contract, a Prospecting Authorization or any agreement made in respect of such Contract or Authorization;
7. "**Prospecting Authorization**" means an authorization granted pursuant to the terms and conditions of articles 8 to 10 of the Fundamental Law on Petroleum Operations;
8. "**Appraisal**" means the activities carried out following the discovery of a Petroleum deposit aimed at better defining the parameters of the Reservoir in order to assess its commerciality, including without limitation:
 - (a) drilling of appraisal wells and running tests; and

- (b) running supplementary analyses, and the acquisition, study and processing of geological and other data;
9. "**National Petroleum Account**" means an account opened and maintained under the terms of the Oil Revenue Law, Law No. 8/2004 of 30 December;
 10. "**Contractor**" means any Person or Persons with whom the Government, for and on behalf of the State, has entered into a Petroleum Contract;
 11. "**Petroleum Contract**" means any agreement signed between the Government, for and on behalf of the State, and a Contractor in accordance with the Fundamental Law on Petroleum Operations that authorizes the performance and regulates the conduct of applicable Petroleum Operations defined therein;
 12. "**Control**" means, in relation to a Person, the power of another Person to secure:
 - (a) by means of the holding of shares or the possession of voting power, in or in relation to the first Person; or
 - (b) by virtue of any power conferred by the articles of association or any other document regulating the first Person or any other Person,that the affairs of the first Person are conducted in accordance with the decisions or directions of that other Person and, for this purpose, there shall be attributed to a Person the powers of any Person with whom he is connected and the powers which he acts together with any other Person to exercise;
 13. "**Total Approved Decommissioning Costs**" means the total costs of Decommissioning approved by the National Petroleum Agency in accordance with an approved Decommissioning Plan and/or as provided in the applicable Authorization, as may be amended from time to time;
 14. "**Development**" means activities carried out pursuant to a Petroleum Contract for a commercial discovery in order to achieve Production including, without limitation:
 - (a) geological, geophysical and reservoir studies and surveys;
 - (b) drilling of production and injection wells; and
 - (c) design, construction, installation, connection and initial testing of equipment, pipelines, systems, facilities, machinery and related activities necessary to produce and operate said wells, to take, treat, handle, store, re-inject, transport and deliver Petroleum, and to undertake re-pressuring, recycling and other secondary and tertiary recovery projects;
 15. "**Decommissioning**" means, in respect of an Authorized Area or part thereof, as the case may be, to abandon, decommission, transfer, remove and/or dispose of structures, facilities, installations, equipment and other property and other works used in Petroleum Operations in an Authorized Area, to clean the Authorized Area and make it good and safe, and to protect the environment, as

further set out in the relevant Authorization and applicable laws and regulations;

16. "**Head Office Expenditures**" means any executive, management or general administration expenditures incurred by a Non-resident Person outside Sao Tome and Principe for the business of a permanent establishment of that Person in Sao Tome and Principe;
17. "**Development Expenditure**" means any and all expenditure incurred in conducting Petroleum Operations after National Petroleum Agency approval of a Field Development Program including, without limitation, Development and Production operations;
18. "**Deductible Expenditure**" means the costs and expenses paid and obligations incurred in carrying out Petroleum Operations computed in accordance with this Law;
19. "**Exploration Expenditure**" means any and all expenditure incurred in conducting Petroleum Operations prior to National Petroleum Agency approval of a Field Development Program including, without limitation, Exploration and Appraisal operations;
20. "**Natural Gas**" means all gaseous hydrocarbons and inerts, including wet mineral gas, dry mineral gas, gas produced in association with Crude Oil and residue gas remaining after the extraction of liquid hydrocarbons from wet gas, but not including Crude Oil;
21. "**Reservoir**" means a porous or permeable underground formation containing an individual and separate natural accumulation of producible Petroleum that is confined by impermeable rock and/or water barriers and is characterized by a single natural pressure system;
22. "**Fundamental Law on Petroleum Operations**" means the Fundamental Law on Petroleum Operations [INSERT NUMBER], as amended, supplemented or modified from time to time, and regulations made and directions provided under such law;
23. "**Taxation Law of Sao Tome and Principe**" means the taxation laws and regulations of Sao Tome and Principe as may be in force from time to time;
24. "**Non-resident**" means any Person who is not a Resident of Sao Tome and Principe;
25. "**Petroleum Operations**" means:
 - (a) activities under an Authorization;
 - (b) activities for the purpose of the Exploration, Appraisal, Development, Production, transportation, sale or export of Petroleum; and/or
 - (c) activities for the purpose of the construction, installation or operation of any structures, facilities or installations for the Development, Production

and export of Petroleum, or Decommissioning or removal of any such structure, facility or installation;

26. "**Exploration**" means the set of operations carried out through the use of geological, geochemical and/or geophysical methods, with a view to locating Reservoirs, as well as the processing, analysis and interpretation of data so acquired as well as regional studies and mapping, in each case leaving an appraisal or better knowledge of the Petroleum potential of a given area and the drilling and testing of wells that may lead to the discovery of Petroleum;
27. "**Person**" means any individual or legal entity, consortium, joint venture, partnership, trust, heir, unincorporated or incorporated organization, or government or any agency or local entity, whether national or foreign, Resident or Non-resident of Sao Tome and Principe;
28. "**Authorized Person**" means:
 - (a) in respect of a Petroleum Contract, a Contractor; and
 - (b) in respect of any other Authorization, the Person to whom the Authorization has been granted;
29. "**Petroleum**" means:
 - (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
 - (b) any mixture of naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state; or
 - (c) any petroleum (as defined above) that has been returned to a Reservoir;
30. "**Crude Oil**" means crude mineral oil and liquid hydrocarbons in their natural state or obtained from Natural Gas by condensation or extraction;
31. "**Field Development Program**" means the program of activities presented by the Contractor to the National Petroleum Agency for approval outlining the plans for the Development of a commercial discovery under the applicable Authorization;
32. "**Decommissioning Plan**" means the plan for the Decommissioning of all wells, facilities and equipment, the rehabilitation of the landscape and the continuation of Petroleum Operations, as provided for in article 55 of the Fundamental Law on Petroleum Operations;
33. "**Production**" means the activities involved in the extraction of Petroleum including, without limitation, the running, servicing, maintenance and repair of completed wells, as well as of the equipment, pipelines, systems, facilities and plants completed during Development including all activities related to the planning, scheduling, controlling, measuring, testing, gathering, treating, storing and dispatching of Petroleum from the underlying Reservoir to the

designated exporting or lifting locations and furthermore, the Decommissioning of wells, facilities, pipelines and Reservoirs and related activities;

34. "**Gross Receipts**" means the gross income and capital gains arising to a Person from Petroleum Operations computed in accordance with this Law;
35. "**Resident**" means:
 - (a) a natural Person who is present in Sao Tome and Principe for more than one hundred and eighty two (182) days during a Fiscal Year;
 - (b) the undivided property of a natural Person who was a resident in Sao Tome and Principe immediately before his death; or
 - (c) a legal Person registered, incorporated, organized or created under the laws of Sao Tome and Principe;
36. "**Sao Tome and Principe**", "**State**" or "**Saotomean State**" means the Democratic Republic of Sao Tome and Principe, as defined in article 1 of the Constitution; and
37. "**Territory of Sao Tome and Principe**" means the territory of Sao Tome and Principe as well as maritime areas under jurisdiction of the State, including the territorial sea, exclusive economic zone and continental shelf, as defined by law and resolutions of the State and public international law.

Article 3 (General Dispositions)

1. Unless the context indicates otherwise, terms used in this Law and not defined in Article 2 have the same meaning that is attributed to them by the Fundamental Law on Petroleum Operations.
2. In the event of any inconsistency between this Law and the Taxation Law of Sao Tome and Principe, this Law prevails.

CHAPTER II Scope of Application

Article 4 (Territorial Scope of this Law)

1. This Law applies to the Territory of Sao Tome and Principe.
2. Except as otherwise provided, this Law is subject to treaties regarding provisional arrangements within the meaning of paragraph 83(3) of the United Nations Convention on the Law of the Sea, signed at Montego Bay, Jamaica on December 10, 1982.

CHAPTER III
Petroleum Fiscal Regime

Article 5
(Taxation of Authorized Persons, Associates etc.)

1. All Authorized Persons and Associates (whether a Resident or Non-Resident) shall be liable to income tax in respect of the profits arising from Petroleum Operations in the Territory of Sao Tome and Principe, in accordance with this Law, subject to any modifications under the provisions of the relevant Authorization.
2. All Non-Resident Authorized Persons shall be deemed to be carrying on Petroleum Operations in the Territory of Sao Tome and Principe through a permanent establishment in the Territory of Sao Tome and Principe.
3. Any profit realized by any Person (whether a Resident or Non-Resident) on a disposal of shares, convertible bonds or other equity interest of any kind in a company, partnership or legal entity which derives the greater part of its value (directly or indirectly) from Petroleum Operations in the Territory of Sao Tome and Principe is subject to income tax (unless any specific exemption provided by any international agreement applies) and any company, partnership or legal entity the shares, bonds or other equity interest in which are the subject of such disposal is jointly liable for any income tax liability of a Non-Resident which results from such disposal.

CHAPTER IV
Income Tax

Article 6
(Rate of Tax and Exclusion)

1. The rate of income tax applicable to an Authorized Person and an Associate for a Fiscal Year under Article 5(1) is thirty percent (30%).
2. The rate of tax applicable to any Person under Article 5(3) is 30%.
3. An Authorized Person shall not derive any income or capital gain or incur any loss for income tax purposes as a result of an election by Sao Tome and Principe pursuant to Article 23 of the Fundamental Law on Petroleum Operations and the applicable Authorization to participate in Petroleum Operations through a company designated by the Government for such purpose.

CHAPTER V

Taxable Profits

Article 7 **(Profits)**

1. The profits of an Authorized Person or an Associate arising from Petroleum Operations for a Fiscal Year are the Gross Receipts of such Authorized Person or Associate for the Fiscal Year less the total Deductible Expenditure of such Authorized Person or Associate for the Petroleum Operations for the Fiscal Year. The profits of an Authorized Person or Associate for a Fiscal Year may be a negative amount of loss.
2. Subject to the other provisions of this Law, the profits of an Authorized Person or Associate from Petroleum Operations shall be computed in accordance with generally accepted and internationally recognized accounting standards, consistent with modern petroleum industry practices and procedures and in accordance with Good Oil Field Practice.

Article 8 **(Gross Receipts)**

1. Subject to the provisions of any relevant Authorization, the Gross Receipts of an Authorized Person or an Associate for Petroleum Operations for a Fiscal Year are the sum of the following amounts:
 - (a) the gross income accrued by the Authorized Person or Associate in the Fiscal Year from Petroleum Operations, including amounts received from the hiring or leasing out of, or the granting of rights to use property, but not including interest income;
 - (b) the consideration received by the Authorized Person or Associate in the Fiscal Year for the disposal, destruction or loss of any property (including materials, equipment, plant, facilities and intellectual property or rights) used in Petroleum Operations if the expenditure incurred in acquiring the property was deducted in computing the profits subject to Saotomean income tax of the Authorized Person or Associate for any Fiscal Year;
 - (c) any amount received by the Authorized Person or Associate in the Fiscal Year from the provision of information or data obtained from any survey, appraisal or study relating to Petroleum Operations if the expenditure incurred in undertaking the survey, appraisal or study was previously deducted in computing the profits subject to Saotomean income tax of the Authorized Person or Associate for any Fiscal Year;
 - (d) any other amount received by the Authorized Person or Associate in a Fiscal Year that is a reimbursement, refund or other recoupment of an amount previously deducted in computing the profits subject to Saotomean income tax of the applicable Authorized Person or Associate for any Fiscal Year; and

- (e) if property has been destroyed or lost by the Authorized Person or Associate, any compensation, indemnity or damages received by it in respect of the property under an insurance policy, indemnity agreement, settlement or judicial decision.
- 2. Notwithstanding Article 8(1) and subject to Article 15, the Gross Receipts of an Authorized Person or Associate include any amount received or accrued as consideration for the transfer of an interest in Petroleum Operations.
- 3. If an amount referred to Article 8(1) is attributable to Petroleum Operations and some other activity of the Authorized Person or Associate, only that portion that relates to Petroleum Operations is included in the Gross Receipts of the Authorized Person or Associate in calculating the Gross Receipts of Petroleum Operations.
- 4. In calculating the Gross Receipts for the purposes of Article 8(1)(a), Petroleum produced shall be brought into account at its true market value based on arm's length transactions for the sale of Petroleum (as determined in accordance with the relevant Authorization, if applicable).

Article 9
(Deductible Expenditure)

- 1. Subject to Articles 10 to 14 and the provisions of any relevant Authorization, the total Deductible Expenditure of an Authorized Person or an Associate for Petroleum Operations for a Fiscal Year is the sum of the following amounts:
 - (a) Authorized Area Non-capital Costs;
 - (b) Authorized Area Capital Costs;
 - (c) Authorized Area Non-Drilling Exploration Costs; and
 - (d) Authorized Area Unsuccessful Exploration and Appraisal Costs.

Deductible Expenditure shall be reported separately for each Authorized Area. Profits shall be determined for each Authorized Person based upon its Gross Receipts and Deductible Expenditures from all Petroleum Operations in the Territory of Sao Tome and Principe in the Fiscal Year. If an amount referred to in this Article 9 is attributable to Petroleum Operations in an Authorized Area and to some other activity of the Authorized Person or Associate in the Authorized Area, only that portion that relates to Petroleum Operations in an Authorized Area is Deductible Expenditure of the Authorized Person or Associate in computing the profits of Petroleum Operations.

2. **Authorized Area Non-capital Costs**

Authorized Area Non-capital costs means those operating costs incurred that are chargeable to the current year's operations. Authorized Area Non-capital costs includes the following:

- (a) General office expenses - office, services and general administration services pertaining to Petroleum Operations including services of legal, financial, purchasing, insurance, accounting, computer, and personnel departments; communications, transportation, rental of specialized equipment, scholarships, charitable contributions and educational awards.
- (b) Labor and related costs - salaries and wages, including bonuses, of employees of the Authorized Person or Associate who are directly engaged in the conduct of Petroleum Operations, whether temporarily or permanently assigned, irrespective of the location of such employee, including the costs of employee benefits, customary allowance and personal expenses incurred under the Authorized Person or Associate's practice and policy, and amounts imposed by applicable governmental authorities which are applicable to such employees.

These costs and expenses shall include:

- (i) cost of established plans for employee group life insurance, hospitalization, - pension, retirement, savings and other benefit plans;
 - (ii) cost of holidays, vacations, sickness and disability benefits;
 - (iii) cost of living, housing and other customary allowances;
 - (iv) reasonable personal expenses, which are reimbursable under the Authorized Person or Associate's standard personnel policies;
 - (v) obligations imposed by governmental authorities;
 - (vi) cost of transportation of employees, other than as provided in paragraph (c) below, as required in the conduct of Petroleum Operations; and
 - (vii) charges in respect of employees temporarily engaged in Petroleum Operations, which shall be calculated to reflect the actual costs thereto during the period or periods of such engagement.
- (c) Employee relocation costs - costs for relocation, transportation and transfer of employees of the Authorized Person or Associate engaged in Petroleum Operations including the cost of freight and passenger service of such employees' families and their personal and household effects together with meals, hotel and other expenditures related to such transfer incurred with respect to:
 - (i) employees of the Authorized Person or Associate within Sao Tome and Principe including expatriate employees engaged in Petroleum Operations;

- (ii) transfer to Sao Tome and Principe for engagement in Petroleum Operations;
 - (iii) relocation costs and other expenses incurred in the final repatriation or transfer of the Authorized Person or Associate's expatriate employees and families in the case of such employees' retirement, or separation from the Authorized Person or Associate, or in case of such employees' relocation to the Authorized Person or Associate's point of origin, provided that relocation costs incurred in moving an expatriate employee and his family beyond point of origin, established at the time of his transfer to Sao Tome and Principe, will not be allowable as Deductible Expenditure; and
 - (iv) Sao-Tomean employees on training assignments outside the Authorized Area.
- (d) Services provided by third parties - cost of professional, technical, consultation, utilities and other services procured from third party sources pursuant to any contract or other arrangements between such third parties and the Authorized Person or Associate for the purpose of Petroleum Operations.
 - (e) Legal expenses - all costs or expenses of handling, investigating, asserting, defending, and settling litigation or claims arising out of or relating to Petroleum Operations or necessary to protect or recover property used in Petroleum Operations including, but not limited to, legal fees, court costs, arbitration costs, cost of investigation or procuring evidence and amount paid in settlement or satisfaction of any such litigation, arbitration or claims in accordance with the provisions hereof.
 - (f) Head Office Expenditures – in the case of a Non-resident Authorized Person or Associate, head office overhead of that Person in the amount specified in any relevant Authorization for recovery of operating costs or, in the absence of any such specification, the amount properly attributable to the permanent establishment of that Person in Sao Tome and Principe in accordance with OECD principles from time to time subject to the maximum limit set out in Article 11.
 - (g) Insurance premiums and settlements - premiums paid for insurance normally required to be carried for the Petroleum Operations together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments, and other expenses, including fees and deductibles relating to the Authorized Person's performance under the relevant Authorization.
 - (h) Duties and taxes - all duties and taxes, fees and any Government assessments, including gas flare charges, license fees, customs duties, other than royalty or income tax.

- (i) Operating expenses - labor, materials and services used in day to day oil well operations, oil field production facilities operations, secondary recovery operations, storage, transportation, delivering and marketing operations; and other operating activities, including repairs, well walkovers, maintenance and related leasing or rental of all materials, equipment and supplies.
- (j) Successful Exploration drilling - all expenditures incurred in connection with the drilling of any exploration well which results in a commercial discovery.
- (k) Successful Appraisal drilling – all expenditures incurred in connection with the drilling of appraisal wells on a commercial discovery.
- (l) Unsuccessful Development drilling - all expenditures incurred in connection with drilling of development wells which are dry, including costs incurred in respect of casing, well cement and well fixtures.
- (m) Successful Development drilling - all intangible expenditures incurred in connection with labor, fuel, repairs, maintenance, hauling, and supplies and materials (not including, casing and other well fixtures) which are for or incidental to drilling, cleaning, deepening or completion wells or the preparation thereof incurred in respect of:
 - (i) determination of well locations, geological, geophysical, topographical and geographical surveys for site evaluation preparatory to drilling including the determination of near surface and near sea bed hazards;
 - (ii) cleaning, draining and leveling land, road-building and the laying of foundations;
 - (iii) drilling, shooting, testing and cleaning wells; and
 - (iv) erection of rigs and tankage assembly and installation of pipelines and other plan and equipment required in the preparation or drilling of wells producing Crude Oil.
- (n) Decommissioning costs - any Decommissioning costs deductible pursuant to Article 12.
- (o) Affiliate services – professional, administrative, scientific and technical services provided by Affiliates of the Authorized Person or Associate for the direct benefit of Petroleum Operations including services provided by the Exploration, Production, legal, financial, purchasing, insurance, accounting and computer services departments of such Affiliates. Charges for providing these services shall reflect costs only, and shall not include any element of profit, and, subject thereto, must be consistent with international market practices.

3. Authorized Area Capital Costs

Authorized Area Capital costs include the following and are subject to depreciation:

- (a) Plant expenditures – expenditures in connection with the design, construction, and installation of plant facilities (including machinery, fixtures, and appurtenances) associated with the production, treating, and processing of Crude Oil (except such costs properly allocable to intangible drilling costs) including offshore platforms, secondary or enhanced recovery systems, gas injection, water disposal, expenditures for equipment, machinery and fixtures purchased to conduct Petroleum Operations such as office furniture and fixtures, office equipment, barges, floating crafts, automotive equipment, petroleum operational aircraft, construction equipment, miscellaneous equipment.
- (b) Pipeline and storage expenditure - expenditures in connection with the design, installation, and construction of pipeline, transportation, storage, and terminal facilities associated with Petroleum Operations including tanks, metering, and export lines.
- (c) Building expenditure - expenditures incurred in connection with the construction of building, structures or works of a permanent nature including workshops, warehouses, offices, roads, wharves, furniture and fixtures related to employee housing and recreational facilities and other tangible property incidental to construction.
- (d) Successful Development drilling - all tangible expenditures incurred in connection with drilling development wells such as casing, tubing, surface and sub-surface production equipment, flow lines and instruments.
- (e) Material inventory - cost of materials purchased and maintained as inventory items solely for Petroleum Operations subject to the following provisions:
 - (i) the Authorized Person or Associate shall supply or purchase any materials required for the Petroleum Operations, including those required in the foreseeable future. Inventory stock levels shall take account of the time necessary to provide the replacement, emergency needs and similar considerations;
 - (ii) materials purchased by the Authorized Person or Associate for use in the Petroleum Operations shall be valued so as to include invoice price (less prepayment discounts, cash discounts, and other discounts if any) plus freight and forwarding charges between point of supply and point of destination but not included in the invoice price, inspection costs, insurance, custom fees and taxes, on imported materials required for the Authorization; and
 - (iii) materials not available in Sao Tome and Principe supplied by the

Authorized Person or Associate or from its Affiliate's stocks shall be valued at the current competitive cost in the international market.

- (f) Authorized Area Capital Costs shall be depreciated over a depreciation period of five (5) years in equal installments of twenty percent (20%) per annum or the remaining term of the Authorization, whichever is less, commencing with the date of expenditure.

4. Authorized Area Non-Drilling Exploration Costs

Authorized Area Non-Drilling Exploration Costs mean those operating costs incurred anywhere in the Authorized Area on Exploration or related activity not directly connected with the drilling of an Exploration well. Authorized Area Non-Drilling Exploration Costs include the following:

- (a) Geological and geophysical surveys - labor, materials and services used in aerial, geological, topographical, geophysical and seismic surveys incurred in connection with exploration excluding however the purchase of data from the National Petroleum Agency.
- (b) Pre-Authorization seismic costs – reasonable costs associated with the acquisition of seismic data covering the Authorized Area Area, including third party processing but not interpretation of the data by the Authorized Person or its Associates, which were incurred prior to the effective date.
- (c) Annual scholarship payments for the training of nationals of Sao Tome and Principe after approval by the National Petroleum Agency.

5. Authorized Area Unsuccessful Exploration and Appraisal Costs

Authorized Area Unsuccessful Exploration and Appraisal Costs mean those Operating Costs incurred anywhere in the Authorized Area in connection with the drilling of any exploration well or appraisal well in the Authorized Area which does not result in a commercial discovery. Authorized Area Unsuccessful Exploration and Appraisal Costs are subject to depreciation over a five (5) year period in equal installments of twenty percent (20%) per annum or the remaining term of the Authorization, whichever is less, commencing with the date of expenditure.

6. Cost of Acquisition of Interest in Petroleum Operations

Notwithstanding Article 9(1) and subject to Article 15, the Deductible Expenditure of an Authorized Person or an Associate does not include any amount incurred as consideration for the acquisition of an interest in Petroleum Operations.

Article 10
(Interest Deduction)

Any interest or other costs and expenses incurred by an Authorized Person or an Associate in connection with loans or advances or credit facilities of any other kind from Affiliates is not deductible. Any interest or other costs or expenses paid by an Authorized Person or an Associate on loans and advances or financing of any kind from third-parties is not deductible unless permitted by the Authorization and only under the conditions stipulated in the Authorization.

Article 11
(Allocation of Head Office Expenditures)

If an Authorized Person or an Associate is a Non-resident Person with a permanent establishment in Sao Tome and Principe, the amount of Head Office Expenditures during a Fiscal Year shall not exceed two percent (2%) of the total Deductible Expenditures (other than expenditures giving rise to depreciation and amortization deductions) of the permanent establishment in Sao Tome and Principe for the respective year, excluding Head Office Expenditures.

Article 12
(Decommissioning Reserve Fund and Decommissioning Expenditure)

1. The amount that an Authorized Person carries to the Decommissioning reserve fund for a Fiscal Year in respect of Petroleum Operations is deductible in calculating the Authorized Person's taxable income for that year. An amount is first deductible under this Article 12 in the Fiscal Year in which estimates of the monies required for funding of a Decommissioning Plan are first charged as a recoverable cost under the applicable Authorization.
2. The Decommissioning reserve fund is calculated by reference to the Total Approved Decommissioning Costs and the amount carried to the reserve for a Fiscal Year is the amount determined for that year under the Authorization.
3. Decommissioning expenditure incurred by an Authorized Person in a Fiscal Year (referred to as the "current Fiscal Year") is not deductible except to the extent that the total amount of Decommissioning expenditure incurred by the Authorized Person in the current Fiscal Year and previous Fiscal Years exceeds the amount calculated according to the following formula:

$$(A + B) - C$$

where:

A is the total amount deductible under paragraph (1) of this Article in the current Fiscal Year and previous Fiscal Years;

B is the total amount deductible under this sub-Article in previous Fiscal Years; and

C is the total amount included in the Authorized Person's gross income under paragraph (4) of this Article in the current Fiscal Year and previous Fiscal Years.

4. If, at any time, the total amount deductible under this Article 12 exceeds the Total Approved Decommissioning Costs, the amount of the excess is included in the gross income of the Authorized Person for the Fiscal Year in which the excess occurs.

Article 13
(Other Non-Deductible Expenditure)

1. Signature and production bonuses provided for in any relevant Authorization shall not be deductible.
2. Neither the value of any social projects undertaken in accordance with an obligation imposed by any relevant Authorization nor any costs incurred in carrying out any such obligation shall be deductible.
3. Costs incurred in excess of five per cent (5%) above costs budgeted for in a work program and budget pursuant to any relevant Authorization shall not be deductible, unless such costs are approved in advance by the National Petroleum Agency.

Article 14
(Limitation on Deductions)

1. Any amount that an Authorized Person or an Associate may deduct under the Taxation Law of Sao Tome and Principe in relation to Petroleum Operations undertaken by such Persons in a Fiscal Year is deductible only against the Gross Receipts arising from such Petroleum Operations in that year.
2. If, in any Fiscal Year, the total deductions of an Authorized Person or an Associate in relation to Petroleum Operations exceeds the total Gross Receipts arising from those Petroleum Operations, the excess may be carried forward to the next following Fiscal Year and is deductible in that year against Gross Receipts arising from such Petroleum Operations.
3. Any amount not deducted under Article 14(2) is carried forward to the following Fiscal Year and is deductible in that year in accordance with Article 14(2), and so on in subsequent Fiscal Years, until the excess is fully deducted or the Petroleum Operations cease, whichever occurs first.

CHAPTER VI
Transfers

Article 15
(Transfer of Interest in Petroleum Operations)

1. If the whole of an Authorized Person's or an Associate's interest in Petroleum Operations is transferred to a third party in accordance with the applicable Authorization and/or the Fundamental Law on Petroleum Operations, the transferee is treated as having the same Gross Receipts and Deductible Expenditures in respect of the interest as the transferor had immediately before the transfer.
2. If part of an Authorized Person's or an Associate's interest in Petroleum Operations is transferred to a third party, the transferee is treated as having the Gross Receipts and Deductible Expenditures in respect of that partial interest as the transferor had in relation to the whole interest immediately before the transfer multiplied by the transferred percentage factor.
3. In this Article 15, "transferred percentage factor" means the transferor's percentage ownership of the Petroleum Operations that is transferred divided by the transferor's total percentage ownership in the Petroleum Operations prior to the transfer.
4. If an Authorized Person transfers an interest in an Authorization, the transferee shall continue to depreciate and amortize any Exploration Expenditure or Development Expenditure in the same manner and on the same basis that the original Authorized Person depreciated and amortized the expenditure.

CHAPTER VII
Payment of Tax

Article 16
(Withholding Tax)

1. An Authorized Person or Associate who pays or places at the disposal of a Person (who is not an employee and who is not himself an Authorized Person or Associate) amounts for the payment of goods or services contracted for Petroleum Operations and delivered in the Territory of Sao Tome and Principe, shall withhold tax from the payment of such goods or services at the rate of six percent (6%) of the gross amount paid.
2. The source of income is considered to be Sao Tome and Principe if the payment is paid by a Resident Person or by a permanent establishment in Sao Tome and Principe of a Non-resident Person.
3. If an amount described in Article 16(1) has been correctly subject to withholding tax under this Article 16, the tax withheld is a final tax on the income of the recipient represented by the payment and:

- (a) no further income tax liability is imposed upon the recipient in respect of the gross income to which the tax relates;
 - (b) that gross income is not aggregated with other gross income of the recipient for the purposes of ascertaining the recipient's taxable income; and
 - (c) there is no deduction (including a depreciation or amortization deduction) for any expenditure or loss incurred in earning the gross income.
4. Every Authorized Person or Associate who has withheld tax from a payment in accordance with this Article 16 shall pay the tax withheld into the National Petroleum Account within fifteen (15) days after the end of the month in which the payment was made. At the time of payment, the payer shall issue to the recipient of the payment a withholding tax notice setting out the amount of the payment made and the amount of tax withheld from the payment.
 5. Any Authorized Person or Associate who fails to withhold tax in accordance with this Article 16 from a payment made by any of them is personally liable to pay the amount of tax which has not been withheld to the National Petroleum Account. Such Authorized Person or Associate is entitled to recover this amount from the recipient of the payment.
 6. Any Authorized Person or Associate who has withheld tax under this Article 16 from a payment made and has paid the amount withheld into the National Petroleum Account shall be treated as having paid the withheld amount to the recipient of the payment for the purposes of any claim by the recipient for payment of the amount withheld.
 7. Any tax withheld by an Authorized Person or Associate under this Article 16 from a payment made by any of them is held by such Authorized Person or Associate as agent for the National Petroleum Agency. In the event of the liquidation or bankruptcy of an Authorized Person or Associate, any amount of tax withheld does not form a part of the estate of the applicable Authorized Person or Associate in any liquidation or bankruptcy, and the National Petroleum Agency shall have a first claim to the tax withheld before any distribution of property is made.

Article 17
(Dividends)

Dividends paid by a Resident Authorized Person out of profits arising from Petroleum Operations are exempt from income tax.

Article 18
(Installments of Tax)

1. Authorized Persons and Associates are liable for monthly installments of income tax for each Fiscal Year. Installments of income tax are payable by the fifteenth (15th) day after the end of the month to which they relate.
2. Subject to Articles 18(3) and (4), the amount of each installment for a Fiscal Year is one-twelfth (1/12th) of the Authorized Person's or Associate's income tax liability for the preceding Fiscal Year. The amount of any installment due prior to the due date for delivering an Authorized Person's or Associate's income tax return for the preceding Fiscal Year is the higher of:
 - (a) the amount of the installment paid for the last month of the preceding Fiscal Year; or
 - (b) the average monthly tax installment payment for the preceding Fiscal Year.
3. The National Petroleum Agency may determine the amount of a tax installment, if:
 - (a) an Authorized Person or Associate has a loss carried forward for the preceding Fiscal Year;
 - (b) an Authorized Person or Associate derives irregular income;
 - (c) an Authorized Person or Associate delivers their income tax return for the preceding Fiscal Year after the due date, including when such Authorized Person or Associate is granted an extension of time to deliver the return;
 - (d) an Authorized Person's or Associate's income tax return for the preceding Fiscal Year is amended, including a self-amendment; or
 - (e) there is a change in the Authorized Persons or Associates circumstances.
4. For an Authorized Person's or Associate's first Fiscal Year, the amount of each installment payable by it is one-twelfth (1/12th) of the amount of income tax estimated by the Authorized Person or Associate to be due for the year. All Authorized Persons and Associates shall deliver to the National Petroleum Agency an estimate of their income tax liability for their first Fiscal Year by the due date for payment of the first installment for the year.
5. An estimate delivered under Article 18(4) remains in force for the whole of the Authorized Person's or Associate's first Fiscal Year unless the Authorized Person or Associate delivers a revised estimate to the National Petroleum Agency. A revised estimate applies for a Fiscal Year to the calculation of installments of income tax for that year due both before and after the date the revised estimate was delivered. The amount of any underpayment of installments made prior to the revised estimate shall be paid by the Authorized Person or Associate together with the first installment due after the revised estimate is delivered. The amount of any overpaid installments is applied against future income tax installments due.

6. If an Authorized Person or Associate fails to deliver an estimate of income tax as required under Article 18(4), the estimated income tax liability for the Authorized Person's or Associate's first Fiscal Year is such amount as estimated by the National Petroleum Agency. The National Petroleum Agency's estimate remains in force for the whole of the Authorized Person's or Associate's first Fiscal Year unless revised by it in accordance with the provisions of Article 18(5).
7. If an Authorized Person's or an Associate's estimate (including any revised estimate) of its income tax for its first Fiscal Year is less than ninety percent (90%) of the Authorized Person's or Associate's assessed income tax liability for that year (the difference is referred to as the "tax shortfall"), the applicable Authorized Person or Associate is liable for a penalty equal to:
 - (a) if the under-estimate is due to fraud or willful neglect, fifty percent (50%) of the tax shortfall; or
 - (b) in any other case, ten percent (10%) of the tax shortfall.
8. No penalty is imposed under Article 18(7)(b) if the National Petroleum Agency is satisfied that the reason for the tax shortfall was due to circumstances beyond the Authorized Person's or Associate's control (such as a significant price fluctuation) and the applicable Authorized Person or Associate took all reasonable care in making the estimate.
9. Installments of income tax paid by an Authorized Person or an Associate for a Fiscal Year are credited against their income tax liability for the year. If the total amount of installments paid exceeds the Authorized Person's or Associate's income tax liability for the year, the excess is not refunded but is credited against the applicable Authorized Person's or Associate's installment of tax due for the next Fiscal Year.
10. The provisions of this Article 18 are subject to any alternative arrangements for the payment of income tax (including the allocation of tax oil) agreed in any relevant Authorization.

CHAPTER VIII **Final Provisions**

Article 19 **(Regulations)**

The National Petroleum Agency shall make regulations for the effective carrying out of the provisions of this Law including regulations of a saving or transitional nature consequent upon the making of this Law.

Article 20
(Entry into Force and Application)

1. This Law applies for Fiscal Years commencing on or after January 1, 2009.
2. This Law enters into force on the day of its publication in the Diario da Republica (National Gazette).