

Supplement "C" to The Gambia Gazette No. of 2007
Income and Sales Tax (Amendment) Act, 2007



THE GAMBIA

NO. 09 OF 2007

Assented to by The President,
this *First* day of *October* 2007

LS

Yahya A. J. J. Jammeh
YAHYA A. J. J. JAMMEH
President

AN ACT to amend the Income and Sales Tax Act, 2004 and for matters connected therewith.

[and]

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Income and Sales Tax (Amendment) Act, 2007.

Amendment of
No. 19 of 2004

2. The Income and Sales Tax Act, 2004 (in this Act referred to as "the principal Act") is amended as set out in this Act.

Amendment of
section 81

3. Section 81 of the principal Act is amended in subsection (1) by substituting for paragraph (a) the following new paragraph-

"(a) employment income from which tax has been withheld under section 89, unless the taxpayer is required by regulations to furnish an income tax return;"

Amendment of
section 83

4. There is hereby substituted for section 83 of the principal Act, the following new section-

"Assessment
of income of
taxpayers
who have
not furnished
income tax
returns

83 (1) If an income taxpayer fails to furnish an income tax return for a tax year by the due date, the Commissioner-General may, based on any available information and to the best of the Commissioner-General's judgment, make an assessment of-

(a) the taxpayer's chargeable income and income tax payable on it, or business loss, for the year and

(b) if section 79 applies, the taxpayer's total turnover and minimum income tax payable on it for the year.

(2) As soon as possible after making an income tax assessment under this section, the Commissioner-General shall serve the income taxpayer with notice of the assessment stating-

(a) the chargeable income or business loss of the taxpayer for the year;

(b) if section 79 applies, the total turnover of the taxpayer for the year;

(c) the amount of income tax and minimum income tax, if any, due;

(d) the amount of income tax paid, if any;

(e) the original due date for payment as determined under subsection (1) of section 86;

(f) the amount of penalty and interest payable, if any, in respect of the income tax due; and

(g) the time, place and manner of objecting to the assessment."

5. There is hereby inserted immediately after section 103 of the principal Act, the following new section-

"Penalty where final tax higher than total instalment tax paid during the year First Schedule

103A. (1) Subject to the First Schedule, a penalty of twenty per cent of the difference, between the amount of instalment tax payable in respect of a year of income as specified in section 103 and the instalment tax actually paid multiplied by one hundred and ten per cent, shall be payable, and interest at the rate of two per cent per month shall become payable on the whole of the difference between the tax assessed and the tax estimated.

(2) The Commissioner-General may-

(a) remit the whole or part of the penalty payable under subsection (1), if he or she is satisfied that the difference referred to in subsection (1) was due to reasonable cause; or

(b) where for a tax year the difference under subsection (1) arises wholly or partly from an estimate of tax to be charged before any change in any allowance or rate of tax, remit the interest payable under that subsection to the extent to which it is attributable to the change.

(3) The Commissioner-General-

(a) may, on appeal, remit-

(i) up to a maximum of twenty five thousand dalasis of the interest payable under subsection (1) per person per annum, and

(ii) any amount of interest in excess of twenty-five thousand dalasis, with the prior written approval of the Secretary of State; and

(b) shall make a quarterly report to the Secretary of State of all penalties and interest remitted during that quarter."

6. Section 110 of the principal Act is amended by-

(a) inserting immediately after subsection (2), the following new subsection (3)-

"(3) A tax credit is allowed under this section only if the foreign tax is paid within two years after the end of the tax year in which the capital asset was disposed of by the resident person.";

(b) re-numbering the existing subsection (3), as subsection (4).

7. There is hereby substituted for section 125 of the principal Act, the following new section-

Amendment of section 110

Amendment of section 125

"Taxable
fringe
benefits
amount"

125. The taxable fringe benefits amount of an employer for a tax year is computed in accordance with the following formula-

$$\frac{A}{1 - R}$$

where -

A is the total value of fringe benefits provided by the employer to employees in the tax year, other than exempt benefits; and

R is the rate of tax specified in subsection (2) of section 124."

Amendment of
section 176

8. Section 176 of the principal Act is amended by substituting for subsection (12), the following new subsections (12) and (13)-

"(12) In the case of an objection to a taxation assessment, the objection is not considered lodged for the purposes of this section until the undisputed portion the tax is paid not later than thirty days of receipt of notice of the assessment.

(13) Notwithstanding subsection (1), where a notice of assessment is served under section 83, 112 (2), 120 (2), 138 (2) or 162 (2), an objection to the assessment is not valid unless the relevant tax return together with all the supporting documents is furnished within thirty days of service of the notice."

Amendment of section 177

9. Section 177 of the principal Act is amended by inserting, immediately after subsection (5), the following new subsection (6)-

“(6) Notwithstanding the other provisions of this section, an income taxpayer who is dissatisfied with the Commissioner-General’s refusal to admit his or her objection to an assessment under section 83, 112 (2), 120 (2), 138 (2) or 167 (2) may, on payment of the whole or part of the amount of tax assessed under the taxation assessment, as the Commissioner-General may require, and on the payment of the penalty specified under section 203, apply to the Tax Tribunal for review of the decision.”

Amendment of section 180

10. Section 180 of the principal Act is amended by deleting subsection (2).

Amendment of section 194

11. Section 194 of the principal Act is amended by substituting for subsection (8), the following new subsection-

“(8) The Commissioner-General shall issue a Taxpayer Identification Number to a person by giving the person a Taxpayer Identification Number Certificate in the prescribed form.”

Insertion of new sections 194A and 194B

12. There is hereby inserted immediately after section 194 of the principal Act, the following new sections-

*Transactions for which Tax-payer Identification Number is required

194A (1) A person resident in The Gambia who carries on a business, trade or profession and every non-resident person who carries on a business in The Gambia shall apply, to the Commissioner-General for a Tax Identification Number in the prescribed form, within fifteen days of the commencement of this Act, in the case of existing business, trade or profession or, within fifteen days of the commencement of the business, trade or profession, in the case of a new business.

Fifth Schedule

(2) A person employed in an institution specified in the first column of the Fifth Schedule shall not transact an official business with any other person for the purposes specified in the second column of that Schedule without first obtaining that person's Tax Identification Number.

(3) A person shall indicate his or her Tax Identification Number, in any claim, notice, return, statement or other document used for the purposes of this Act.

(4) Subject to any written direction by the Commissioner-General to the contrary, an institution specified in

Fifth Schedule

the first column of the Fifth Schedule shall require a Taxpayer Identification Number from a person applying for the service or engaged in the transactions specified in the second column of that Schedule.

(5) The Secretary of State may, by Order published in the *Gazette*, amend the provisions of the Fifth Schedule.

(6) A person employed in an institution specified in the Fifth Schedule who fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine of five thousand dalasis or imprisonment for a term of six months, or to both the fine and imprisonment.

(7) A person who, with intent to defraud or deceive, provides to any other person, or indicates on any document, a false number purporting to be his or her Taxpayer Identification Number commits an offence and is liable on conviction to a fine of twenty thousand dalasis or imprisonment for a term of two years, or to both the fine and imprisonment.

Exemptions

194B. (1) The provisions of this Part do not apply to-

- (a) the President of the Republic of The Gambia or any person acting as President, where it affects his or her official employment income;
- (b) a non-commissioned officer of the Armed Forces of the Republic of The Gambia;
- (c) a religious or charitable organisation of the public character in respect of Clergymen, Imams and Missionaries; and
- (d) a diplomatic or consular mission or its representative in The Gambia.

(2) The President, with the approval of the National Assembly, may, from time to time by Order published in the *Gazette*, exempt a person or class of persons from any or all of the provisions of this Part."

Amendment of section 203

13. There is hereby substituted for section 203 of the principal Act, the following new section-

"Penalty for failure to furnish a tax return

203. A person who fails to furnish a tax return as required under this Act is liable to a penalty of five thousand dalasis."

Amendment of section 208

14. Section 208 of the principal Act is amended by deleting subsections (4) and (5).

Amendment of
Section 238

15. Section 238 of the principal Act is amended by inserting immediately after subsection (2), the following new subsections-

No. 7 of
1994

“(3) The Taxpayer Identification Number Act, 1993 is also hereby repealed.

(4) The repeal of the Taxpayer Identification Number Act, 1993 does not affect anything done or purported to be done under the enactment.

(5) Notwithstanding the repeal of the Taxpayer Identification Number Act, 1993, a Taxpayer Identification Number or Certificate issued under that Act is deemed to have been issued under this Act and shall remain valid until it expires or is replaced under this Act.”

Amendment of
Second Schedule

16. There is hereby substituted for the Second Schedule to the principal Act, the new Schedule set out in Part 1 of the Schedule to this Act.

Insertion of
Fifth Schedule

17. There is hereby inserted immediately after the Fourth Schedule to the principal Act, the new Schedule set out in Part II of the Schedule to this Act.

SCHEDULE (sections 16 and 17)**PART I** (section 16)**"SECOND SCHEDULE** (section 10 (5))**MODIFICATIONS TO THIS ACT IN RESPECT OF
INCOME ARISING OUT OF, OR IN CONNECTION
WITH, PETROLEUM OPERATIONS UNDER THE
PETROLEUM (EXPLORATION, DEVELOPMENT
AND PRODUCTION) ACT, 2004****PART I – PRELIMINARY**

1. (1) In this Schedule-

"Best Industry Practice" means generally accept-ed practices prevailing in the modern international petroleum industry, including-

(a) conducting petroleum operations and performing all obligations under the licence or permit expeditiously, efficiently, and in a workman-like manner using sound engineering and technical practices with the diligence and prudence exercised by experienced parties engaged in a similar activity under similar circumstances and conditions;

(b) conducting petroleum operations so as to maximise the ultimate recovery of petroleum from a petroleum field through the most rapid economically viable development that is consistent with prudent reservoir management;

- (c) ensuring that all equipment, facilities, materials, supplies, plants and installations used are of appropriately advanced technology and otherwise comply with generally accepted international standards and are of proper construction and kept in safe and good working order;
- (d) taking all reasonable steps to protect and rehabilitate the environment and to prevent the release into the environment of any hazardous substances from petroleum operations;
- (e) providing acceptable working conditions, living accommodation and access to medical care for all personnel engaged in petroleum operations; and
- (f) conducting petroleum operations in accordance with this Act, the terms of any applicable licence or permit, regulations made under this Act, and any other applicable law;

“Cumulative Resource Expense” means, at any time, the amount obtained from performing the following calculation-

$$(A) - (B+C)$$

Where-

- (A) is the total of all amounts each of which is a Resource Expense made or incurred by the person before that time;

(B) is the total of all amounts of Cumulative Resource Expense claimed as a deduction in accordance with Part IV of this Schedule in computing a person's Net Income From Petroleum Operations for a person's tax years ending before that time; and

(C) is the total amount of any Government assistance requested by a person and received or receivable by the person before that time.

"Direct Operating Costs" means, for any tax year, in regard to any licence or permit held by a person in The Gambia, each and every outlay or expense beginning in the year of First Commercial Production under the licence or permit of whatever nature incurred by the person for the purpose of production (excluding development) from licence or permit, including any outlays and expenses associated with development facilities (which are part of a Development and Production Plan approved by the Commissioner under the licence or permit) located either inside of, or outside of, the area of the licence or permit, and also including-

(a) an allocation to production (excluding development), in accordance with Best Industry Practice, of an applicable portion of all amounts of general administration and management costs and Foreign Office Overhead Charges;

(b) interest costs associated with production (excluding development);

(c) any royalties, or any other fiscal obligations of any kind under the licence or permit, excluding income tax under this Schedule (in respect of income arising out of, or in connection with, petroleum operations, income tax under this Act in respect of other income, if any, not arising out of, or in connection with, petroleum operations, additional profits tax under the licence or permit, and Payroll Tax and National Development Levy paid or payable to the Government under the licence or permit; and

(d) any environmental costs or payments into an abandonment fund:

Provided that the outlays or expenses shall not include-

(i) costs or expenses in satisfaction of a licensee or permit holder's obligation to conduct an environmental impact assessment under section 49 of the Petroleum Act,

(ii) fines or other penalties incurred pursuant to the Petroleum Act, and

(iii) a Resource Expense;

"First Commercial Production" means the first commercial production in a licence or permit after the completion of the associated development and production plan under the licence or permit, and after the commissioning date of the associated facilities.

"Foreign Office Overhead Charge" means, for any tax year, a charge incurred for services rendered by affiliates of a licensee or permit holder outside of The Gambia that are not directly billed to the licensee or permit holder (including foreign office, staff services and salaries, professional services and salaries, management services and salaries, communications, office rentals and depreciation, property taxes, parking and utilities) that shall be calculated annually and be the greater of-

- (a) the actual aggregate amounts associated with the services and costs; or
- (b) one quarter of one *per cent* of the turn-over (Gross Income From Petroleum Operations) of the licensee or permit holder for the tax year;

"Gross Income From Petroleum Operations" means, for any tax year, any and all amounts received or receivable by a person arising out of, or in connection with, petroleum operations in the licence or permit held by the person in The Gambia beginning in the year of First Commercial Production under the licence or permit (with the amounts received or receivable by the person prior to the year of First

Commercial Production, including amounts receive for test crude oil, being deemed to have been received in the year of First Commercial Production), including-

- (a) the sale of petroleum products (with the amounts being calculated on the basis of United States dollar FOB the delivery point under the licence or permit, by subtracting from the amounts received for the sale all costs of whatever nature associated with the transport, insurance and administration of the sale and marketing of the licensee's or permit holder's petroleum downstream of the delivery point;
- (b) any amounts in an abandonment fund under the licence or permit which are unused and, accordingly, revert to the licensee or permit holder; and
- (c) any other amounts received or receivable by a person in conjunction with circumstances or activities in connection with the foregoing (excepting amounts described in "C" in the formula associated with the calculation of Cumulative Resource Expense) but does not include any amount received or receivable by the person for the disposition of an interest in the licence or permit, or in connection with the change of control of the person (provided, as described in paragraph 2 (4) of this Schedule, that, in the case of a disposition of an interest in the licence or permit, the transferee must become an entity comprising the licensee or permit holder).

"Income After Operating Costs" means, for any tax year, in regard to any licence or permit held by a person in The Gambia, beginning in the year of First Commercial Production under the licence or permit, the amount (positive or negative) remaining after direct operations.

"Net Income from Petroleum Operations" means, for any tax year, in regard to any licence or permit held by a person in The Gambia, beginning in the year of First Commercial Production under the licence or permit, the sum of-

- (a) the amount (positive or negative) remaining after the applicable amount of Cumulative Resource Expense, and tax loss carry forward, are deducted from Income After Operating Costs; and
- (b) any amount deemed under section below to be included in Net Income From Petroleum Operations;

"Petroleum Act" means the Petroleum Exploration, Development and Production) Act, 2004, as amended;

"Resource Expense" means, for any tax year, in regard to a licence or permit held by a person in The Gambia, any outlay or expense incurred by a person which is reasonably attributable to the person's acquisition of an interest in the licence or permit, or the exploration for, or the development of, petroleum located within the licence or permit,

including outlays and expenses associated with development facilities (which are part of a development and production plan approved by the Commissioner under the licence) located either inside of, or outside of, the area of the licence or permit, including-

- (a) all amounts of whatever nature incurred prior to the beginning of First Commercial Production under the licence or permit;
- (b) an allocation to exploration and development, in accordance with Best Industry Practice, of an applicable portion of all amounts of general administration and management costs and Foreign Office Overhead Charges incurred after the beginning of First Commercial Production;
- (c) interest costs associated with exploration and development of petroleum; and
- (d) all other amounts of whatever nature incurred after the beginning of First Commercial Production, including rentals paid or payable to the Government,

but does not include any fines or other penalties incurred pursuant to the Petroleum Act, or direct operating costs;

“Return on Capital Factor” means, at any time, the amount obtained from performing the following calculation-

$$R = \frac{\sum A - \sum B}{\sum C}$$

Where —

- (a) **R** is the return on capital factor;
- (b) ΣA is the aggregate of the licensee's Net Income From Petroleum Operations;
- (c) ΣB is the aggregate of the licensee's income tax and additional profits or tax paid pursuant to the licensee from the effective date until the end of the last tax year; and
- (d) ΣC is the aggregate of the licensee's Resource Expenses in respect of the licence over the same period;

"Specified Rate" means—

- (a) for Net Income From Petroleum Operations not exceeding ten million United States dollars (or the equivalent), *thirty-five per cent*;
- (b) for Net Income From Petroleum Operations between ten million United States dollars (or the equivalent), and twenty-five million United States dollars (or the equivalent), *thirty-eight per cent*;
- (c) for Net Income From Petroleum Operations equal to or in excess of twenty-five million United States dollars (or the equivalent), *forty per cent*; and

- (d) additional profits tax equal to ten *per cent* multiplied by the licensee's Net Income From Petroleum Operations in the relevant tax year during which the Return on Capital Factor exceeds 2:1;

"The Gambia" includes the continental shelf and all lands and waters of The Gambia.

(2) Words not defined in this Schedule have the meanings given to them in the Petroleum Act and the word "including" shall be construed to mean including, without limitation.

PART II – APPLICATION OF THIS ACT AND THIS SCHEDULE

2. (1) This Act, as modified by this Schedule, applies to-

- (a) a person having an interest in a licence or permit;
- (b) activities or circumstances in connection with a licence or permit;
- (c) a person undertaking petroleum operations or similar activities in The Gambia; and
- (d) activities or circumstances in connection with sub-paragraphs (a), (b) and (c).

(2) This Schedule applies exclusively to any amounts of income received or receivable by a person, and to costs paid or incurred by a person, arising out of or in connection with petroleum operations in any licence or permit held by the person in The Gambia, and the other provisions of this Act (including the various fiscal obligations provided for in it) shall not apply to any those amounts.

(3) The other provisions of this Act apply only to amounts of income receive or receivable by a person, and to costs paid or incurred by a person, not arising out of, or in connection with, petroleum operations in licence or permit held by the person in The Gambia.

(4) Without limitation, any amounts received or receivable by a person either-

(a) for the disposition of an interest in a licence or permit; or

(b) in regard to a change of control as described in section 68 of this Act,

is not subject either to income tax under this Schedule or to income tax or any other fiscal obligations under this Act (including withholding taxes), which means that, no tax or other fiscal obligation of any kind is applicable to any the amount, provided that in the case of a disposition of an interest in the licence or permit as described in sub-paragraph (4)(a), the transferee must become an entity comprising, licensee or permit holder, and any change of control shall have no impact on the person's tax position under this Schedule.

(5) Except as expressly provided under this Schedule, any and all outlays and expenses paid or incurred by a licensee or permit holder arising out of, or in connection with, petroleum operations in any licence or permit held by the person in The Gambia shall be classified as either Direct Operating Costs or Resource Expense.

(6) There shall be a six year limitation on the carry forward of any tax losses on a first-in, first-out, basis, provided for under this Schedule, beginning in the year of First Commercial Production.

(7) Any fiscal obligation exclusion or fiscal stabilization provisions described in an applicable licence or permit, or in the Petroleum Act, shall be enforceable in accordance with those provisions, and applicable to all forms of fiscal obligations, including all forms of taxes and other fiscal obligations described in this Schedule or in this Act.

(8) Each person comprising a licensee or permit holder shall be individually liable for the calculation and payment of income tax in compliance with this Schedule and with this Act.

(9) Each person comprising a licensee or permit holder may consolidate its income and costs from all licences or permits in The Gambia in which it has an interest for the purpose of calculating income tax under this Schedule, which means that, no "tax ring fence" shall be applicable.

(10) All accounting for purposes of this Schedule shall be in United States dollars.

PART III – INCOME TAX LIABILITY

3. A person described, or undertaking any activities described, in paragraph 2 of this Schedule, is liable, for each tax year, for income tax at the specified rate multiplied by the person's Net Income from petroleum operations, for each tax year in which the persons net income from petroleum operations is a positive amount.

PART IV – CALCULATION OF NET INCOME FROM PETROLEUM OPERATIONS

4. For each tax year, Direct Operating Costs shall be deducted from Gross Income From Petroleum Operations in order to calculate Income After Operating Costs (which may be a positive or a negative amount) then forty per cent of the applicable Cumulative Resource Expense shall be deducted from Income After Operating Costs in the calculation of Net Income From Petroleum Operations (which may be a positive or a negative amount).

5. In any case where Net Income from petroleum operations under sub-paragraph (4) is a negative amount, the negative amount shall constitute a tax loss that shall be carried forward into the following tax year and in the following tax year, the tax loss shall be deducted from Income After Operating Costs, along with forty *per cent* of the applicable Cumulative Resource Expense, in the calculation of Net Income From Petroleum Operations.