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Petroleum Fiscal Regimes and the Law in Cameroon

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Abstract

This article is aimed principally at examining the fiscal regimes that exist in Cameroon's petroleum industry. To attain this objective, the doctrinal research methodology was used, consisting of primary and secondary data. The findings of this study show that despite the existence of a petroleum fiscal regime that attracts investors in this area of the economy, high taxes, the complexity of the petroleum fiscal laws, and irregular publication of oil companies' revenue data pose challenges to the effective implementation of the fiscal regimes in Cameroon's petroleum industry. In this light therefore, the researcher recommends a reduction of petroleum taxes, simplicity of tax compliance procedures, and regular publication of oil companies' data as measures to overcome the aforementioned challenges.

Keywords: Downstream petroleum, fiscal regime, petroleum, upstream petroleum

INTRODUCTION

A country's fiscal regime is vital in sprouting socio-economic development. The Cameroonian government has been very interested in watching its natural resource sector grow. In this light, efforts have been made at the national level to enact laws especially in the petroleum sector, to give it a facelift. This is explainable through the promulgation of a new petroleum code in 2019. The oil sector in Cameroon is usually classified into the downstream and upstream sectors. The upstream sector, which usually involves exploration, exploitation, and production, is usually dominated by multinational companies. The main legal instrument that sharpens the conduct of investors in this sector is the newly enacted petroleum code which came into force in 2019. The principal laws in this sector are the Finance Law and the General Tax Code, which are promulgated yearly.

This article is aimed principally to examine the fiscal regimes that exist in Cameroon's petroleum industry. Specifically, this article seeks to examine the extent to which petroleum fiscal regimes in Cameroon act as incentives to investors in this sector of the economy and the problems that are associated with Cameroon's petroleum fiscal regimes. To ensure tax payments compliance along the upstream and downstream oil sectors, the government has instituted stringent measures against defaulters who fail to comply with the tax regimes applicable to their activity [1]. However, despite the fact that the Cameroonian government has put in place a plethora of laws to ensure compliance with petroleum taxes, tax evasion, and high taxes, and the complexity of the petroleum fiscal laws stands as a major impediment to Cameroon's petroleum fiscal regimes.

FISCAL ARRANGEMENTS OF THE UPSTREAM PETROLEUM SECTOR IN CAMEROON

The domanial regime of ownership has vested on the state the sovereign right over its natural resources [2]. As custodian of these natural resources, the government has designed fiscal policies to boost the appetite of investors who want to dire oil exploitation activities. However, the

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fiscal regimes for upstream petroleum operations vary from one country to another [3]. Law No.2019/008 of April 25th 2019 which amended the 1999 Petroleum Code has instituted different categories of taxes to be paid by the petroleum operators involved in the upstream petroleum sector in Cameroon. This section of the work provides detailed analyses of these fiscal regimes.

Flat Rate Fee

One of the taxes paid by oil operators in Cameroon is flat rate fees [4]. Furthermore, an exploitation authorization is subject to a flat fee of two hundred and fifty million XAF (250 million) [5]. Deducing from the wordings of the decree, its scope covers only exploitation authorization. Exploration authorization warrants no payment of flat rate fees [6].
In summary, fixed entry fees for the granting and renewal of petroleum authorizations or permits are subject to payment of fixed entry fees in Cameroon and are as follows:

a. Prospecting authorization: XAF 6,000,000;
b. Exploration authorization or permit: XAF 15,000/km² at the granting and CFAF 10,000/km² at the renewal, with a minimum levy of CFAF 6,000,000;
c. Production authorization: XAF 250,000,000 at the granting, renewal, and transfer [7].

Surface Rental Fees

As the name denotes, it is levy or charge liable to petroleum companies and or their sub-contractors on an annual basis, for the use of a particular parcel of land within the Cameroonian territory be it temporal, partial or permanent occupation [8].

It is a duty imposed on petroleum companies by law, for the use and occupation of a particular piece of land. The annual Finance Law helps in establishing the bases for the payment of the amount of annual surface rental fee [9].

In Cameroon, an annual surface area royalty is due depending on the relevant phase of petroleum operations:

a. Exploration authorization or permit: increases from XAF 1,750/km² in year 1 to XAF 5,500/km² in year 5, and beyond;
b. Production authorization: XAF 100,000/km² with a minimum levy of CFAF 6,000,000 [10].

Royalties

Royalties are the earliest form of payment in the oil industry and traditionally, have usually been levied according to the volume of production, and not on profitability [11]. It is a payment in value or in kind by a lessee to the lessor calculated as a percentage of the gross income from a lease [12]. The rate is either fixed or negotiable. In Cameroon, royalty fee is negotiable.

Royalties are not quite ubiquitous in practice. Cameroon for example, has a conventional provision where royalties are collected in proportion to production, in cash or in kind, under the terms specified in the contract [13].

Corporate Income Tax

Corporate income tax is also another popular mechanism for generating revenue in the oil sector. The Cameroonian Petroleum Code clearly provides that, holders of petroleum contracts or business licenses in Cameroon are subjected to the payment of corporate taxes [14]. They are levied on corporations' taxable income [15]. Oil companies usually keep separate accounts for their oil operations for purposes of verification.

The rate of company tax stands at thirty-five (35%) [16]. In all, the rules governing the taxable amount and mode of payment of company tax are those which have been laid down by the tax legislation in force in the Republic of Cameroon [17]. To ease assessment of corporate income tax, petroleum operators keep their accounts in US Dollars. This follows suit with their and dominate their share capital in such currency [18]. The Cameroonian Government has given laxity to oil operators to either chose to apply either special income tax system or the common law system, dating from 2010 when the fiscal law was enacted [19].

Bonuses

Bonuses are payments made as part of the monetary consideration for the grant of oil prospecting licenses, production-sharing contracts, and marginal field allocations [20]. They are usually paid in addition to rent. It can equally be defined as a payment made by a company to the state at agreed designated periods [21]. The amount of the bonuses involved in respect of grant of oil prospecting licenses and production sharing contracts are usually substantial, the value depending on the size of the concession [22]. Payment of the bonus in hard currency is required to be made within the time stated in the contract as a condition. Failure to effect the payment within such stated time will vitiate the contract except an extension is permitted [23].

However, bonuses are not paid in some other countries like India while in Gabon sub Saharan Africa, 4th largest oil producer and holding the third largest oil reserves in the region, signature bonuses are recoverable after 10 years [24]. The new Cameroonian Petroleum Code provides for the payment of bonuses by companies involved in the petroleum sector. The Petroleum Code had made provisions for two types of bonuses and they include: signature and production bonus. However, in addition to signature bonus and bonus for discovery, there also exists bonus for production.

Signature bonuses are amount payable before signing oil contracts; production bonuses are paid to the state in proportion to the quantities of hydrocarbons produced [25]. In Cameroon, auctioning for blocks for oil exploration and production takes two principal forms: traditional and open tendering. The traditional tendering process, also known as conventional tender process is characterized by well-defined instructions to bidders setting out the terms and conditions governing the competitive process and requiring their revocability of bids [26]. Subject to any enforceable rights of an owner under a privilege clause, non-compliant bids will be rejected. Security for the bid in the form of a bid bond, deposit, letter of credit, or guarantee may be required. Upon submission of a bid, a contract arises between the owner and bidder creating binding contractual relations. During the tendering process, all bidders and tenderers who meet the requirement must be treated fairly.

Open tendering involves inviting submissions from the open market [27]. Tenderers must demonstrate in their tenders how they satisfy the evaluation criteria and how they meet the specific tender requirements. Tendering processes are done by SNH on behalf of the government.

Stamp Duty, Tolls, Real Estate Publicity, and Motor Vehicle Tax

Companies involved in the Cameroonian oil industry are also liable to other forms of charges and duties. Payments of stamp duty, tolls, real estate publicity, and motor vehicle tax have a legal justification by the Cameroonian legislators [28]. The payments of the aforementioned taxes were evidenced during the Ndian River Contract between the Republic of Cameroon and Kosmos Energy HC [29].

Annual Surface Rental

Oil operators (multinational or national oil companies) involved in research and those with an authorization to explore pay annual surface rental fee [30]. With respect to a research authorization, the amount is set at 1,750 XAF/km² in the first five years, 2000XAF/km² for the second year, 3500XAF/km² for the third year, and the following year's 5,500XAF/km² [31]. An annual surface tax of 100,000 XAF/km² per year, with a minimum levy set at XAF, 6,000,000 is paid by companies that have an authorization relating to liquid hydrocarbons pays [32].

Additional Petroleum Tax

The amount to be paid is usually specified in each contract and is based on the profits derived from petroleum operations [33].

CATEGORIES OF DOWNSTREAM PETROLEUM TAXATION AND THEIR APPLICATION IN CAMEROON

The fiscal regime applicable to oil activities in Cameroon are laid down by the finance law as promulgated yearly and the petroleum code which specifies the tax liabilities of petroleum companies. This section of the work is designated to examine the fiscal regime governing the downstream oil operation and their significance on the oil operators.

Special Tax on Petroleum Products

One type of tax paid by companies operating in the downstream oil sector is the special tax on petroleum products [34]. The General Tax Code provides for the payment of a special tax on the sale of petroleum products. This tax is payable on premium grade petrol, gas-oil, and first use of petroleum product in case of self-deliveries [35]. Refineries and oil storage enterprises using petroleum products for their own operations or for other needs are also liable to special tax on petroleum products [36]. The special tax on petroleum products is payable by companies which distribute taxable products [37].

Diplomatic and consular missions, international organizations and their staff of diplomatic rank are exempted from the special tax on petroleum products, within the limit of quotas set by regulation, subject to a formal reciprocity agreement or headquarters agreement [38]. One novelty brought by the General Tax Law is that, the rates of the special tax on petroleum products have been constituted as follows: 110 XAF per liter of premium grade petrol; 65 XAF per liter of gas and of oil [39].

The taxable event for the special tax on petroleum products will constitute: removal of taxable products at the Cameroon Oil Storage Company (SCDP); delivery by the National Oil Refining Corporation (SONARA) of taxable products not transiting through the SCDP warehouse and the introduction of taxable products on the territory, as defined in the CEMAC Custom Code, with regard to imports and first use of petroleum product in the case of self-deliveries [40].

Another innovation of the GTC is that it ensures the special tax on petroleum products to be deducted at source by the SCDP during removal by distributing companies and by the National Refining Company SONARA for its deliveries to natural persons other than distributing companies. As sanctions for non-payment of this tax, the code instituted suspension to the marketers. In this light, the GTC Code provides that:

> *Marketers who fail to pay the special tax on petroleum products within the prescribed time-limits shall immediately be suspended from collecting petroleum products from the companies in charge of managing petroleum depots or refining, and such information shall be transmitted to tax authorities to establish the tax debt vis-à-vis the actual taxpayer [41].*

To ensure compliance and implementation of the payment of STPP, the companies in charge of managing oil depots or refineries are bound to transmit to their tax centers, within five (5) days following the deadline for payment of the special tax on petroleum products, the list of defaulting marketers, and the corresponding amounts [42]. The non-payment of STPP can be done equally through the establishment of collection notices and the forced recovery measures against marketers, who are actually liable for the special tax on petroleum products within the framework of the implementation of the joint payment procedure [43].

Any subsequent collection of products made without payment of STPP will result in the issuance of a collection notice to the company in charge of managing oil depots or refining, if necessary, in its capacity as legal debtor, and the immediate implementation of forced recovery measures against it. The special tax on petroleum products collected by SCDP or SONARA shall be transferred monthly no later than the twentieth (20th) day into each month for transactions carried out during the previous month, on presentation of the tax return made by the tax payer [44].

Value Added Tax

Companies pay VAT for carrying out economic activities. Amongst the taxable transaction is mining activities [45]. Construing from the given, mineral activities are entitled to the payment of VAT.

Holders of petroleum licences do not pay VAT. However, their activities or services must be directly related to the petroleum operations [46]. The operational rate of VAT in Cameroon is 19.25 percent. Attestation of exemption from VAT must be obtained by oil companies and their subcontractors [47].

Custom Duties

Custom duty is another fiscal policy provided by the Cameroonian legislators to be borne by economic operators exercising any form of businesses within the Cameroonian territory especially those of petroleum companies. The 2019 Petroleum Code provides that: Subject to special provisions set out by the law, holders of petroleum contracts and their subcontractors are liable to the provisions of the CEMAC Custom Code [48].

To encourage rapid exploitation, room is given to oil operators to imports supplies and all necessary equipment needed for their activity [49]. In this light, the code has provided for a 2 years preferential regime for materials and equipment imported by the oil companies [50]. However, the minister has the power to grant reduction of five percent on import duties and taxes relating to machinery used for petroleum activities [51].

TAX INCENTIVES IN THE OIL INDUSTRY IN CAMEROON

Cameroon has introduced different fiscal incentives to attract investors in the upstream and downstream oil sectors. There are various reasons why host countries, like Cameroon, have introduced petroleum incentives:

- To encourage onshore exploration and offshore exploration [52];
- Help reduce risks on the part of the oil operators who, after spending a huge amount, may find the venture unprofitable;
- Encourage the implementation of a tertiary recovery programme so as to increase the productivity of deposits; [53]
- To promote upstream activities;
- Guarantee their operations through stabilization clauses which can be fiscal or economic [54].

Methods of Petroleum Incentives in Cameroon

The methods of petroleum incentives vary from one country to another. The methods provided by the legislators in Cameroon include the following:

Capital Allowances

Holders of an oil contract may claim tax depreciation on capital expenditure on the basis of modalities provided by the oil contract from the year of commercial production began. This tax allowance is to enable them invest their capital in a risky adventure in Cameroon.

Tax Exemption

Five years for liquid hydrocarbons and seven years for gaseous hydrocarbons are usually granted as a tax exempt periods for corporate tax [55]. Zero point forty-five (0.45%) percent is the reduction granted for the payment of computer fees for petroleum activities in Cameroon [56].

Re-exported equipment and associated materials that have been used after petroleum operations are exempt from taxes during the exploration/research phase [57]. In the production phase, all machinery that was used and needs to be re-exported benefits from a 5% reduction. Holders may export the share of hydrocarbons to which they are entitled, free of all export taxes and duties [58].

Discretionary Tax Rates

Discretionary tax rates are an attractive tool for oil companies in Cameroon. In Cameroon, for instance, the IOCs can negotiate with the government to pay their royalty in kind or cash [59]. The amount to be paid as royalties in Cameroon is usually specified in each petroleum contract. This therefore gives the possibility for the contract holders to negotiate the amount meant to be paid as royalty.

The Cameroonian Petroleum Law is also flexible which equally serves as an incentive to oil operators. The state's participation does not exceed 5 percent. Also, there is the possibility for investors to recover their expenditures in what is known as "cost oil''. Profit oil which is shared after their expenses must have been recovered, further encourages investor in Cameroon's mineral industry [60].

Penalty for Non-Compliance with the Petroleum Fiscal Regime in Cameroon

The sanctions for non-compliance vary with the offence committed by the taxpayers which is examined under this subhead.

Sanctions for Failure to File a Return

Any taxpayer whom after a notice to declare has not filed a return will be liable to arbitrary assessment and his taxes will be increased by 100%. Such increase shall be raised to 150% in case of a further offence [61]. Interests are paid if the oil operator fails to declare their acute amount [62]. Payment of interest in arrears is fixed at 50%.

Non-compliance with the timeframe gives rise to the payment of a penalty of a fixed fine of XAF 1,000, 000 (one million) [63]. The fines double to XAF 1,000,000 (one million) per month if the warning notices are not respected [64].

Punitive Measures for Late Submission of Returns

A ten percent fine will be paid for late submission of returns per month. This will be capped at thirty percent of the principle tax due [65].

Measures Against Inadequate Return

When oil operators provide inadequate, omit or provide inaccurate formations which affect their tax base or data, causing the tax authority to make adjustments on their taxes, they will pay 1.5% interest in arrears per month, up to a maximum of 50%. This takes effect from the day a notification for an adjustment was served to the oil operator.

Any inadequacies, omissions, or dissembling which affect the base or elements of assessment and lead the authority to make adjustments, mention of which must be made expressly in the last procedural document, in addition to the 1.5 percent interest in arrears will also attract the following additional penalties:

- 30% in case of good faith;
- 100% in case of bad faith;
- 150% in case of fraud.

Sanction for Late Payment

Any oil operator who fails to submit his report on time will pay one-point five percent interest per month up to a maximum of fifty percent [66]. Penalties depend on the quantum of the offence committed [67].

Suspension/Withdrawal of Petroleum Products

Circular No. 011/MINFI/DGI/LRI/L of 5th March 2021 outlining the application modalities of Law No. 2020/018 of 17th December 2020 on the Finance Law of the Republic of Cameroon for the 2021 fiscal year also contains provisions to sanction defaulters of petroleum taxes in Cameroon. The general principle is that STPP collected by the companies in charge of the management of oil depots or refineries for a given month must be remitted to the competent tax office no later than the 20th of the month following that in which the products were made available to the marketers [68]. Thus, under the 2021 Finance Law, failure by the legally liable persons (SCDP or SONARA), to remit within this timeframe due to the default of a marketer will oblige the companies in charge of managing oil depots or refineries to immediately suspend the removal of the marketer in default [69]. The legally liable person will then send a copy of the suspension decision to its tax office, accompanied by the amount of the corresponding STPP [70].

An innovation brought by the 2021 Finance Law is that, it relieves SCDP and SONARA from paying STPP due to failure by the oil marketers. However, they must fulfil two major requirements; proceed with the immediate suspension of the defaulting marketers and transmit within 5 days the list of defaulting marketers together with the amount due by each [71]. Upon receipt of the list of defaulting marketers, the tax management office will immediately issue notice of the collection to the oil marketers. The amount of the debt to be paid must include the principal tax, the penalties, and the interest for late payment due from the defaulting marketers [72].

Principal Penalties

Principal penalties stem from criminal law, and are punitive in nature [73]. The principal penalty here goes to the payment of fines and imprisonment. The Cameroonian General Tax Code has clearly stated the quantum of punitive actions. In this regard, the offence is punishable with loss of liberty from 1 (one) to 5 (five) years or a fine of from five hundred thousand (500,000) XAF to five million (5,000,000) XAF, or both types of fine and imprisonment.

A disadvantage of using criminal sanctions is that it becomes difficult to imprison corporations for failing to pay taxes since they have legal personalities. Since corporate bodies enjoy a legal status, fines might be more appropriate than imprisonment since they cannot be imprisoned. The exception will be when the corporate veil is lifted.

Supplementary Penalties

The criminal court, by way of supplementary penalty, may pronounce the forfeitures on the IOCs that default in payment of taxes; prohibit temporarily, for a period not exceeding five (5) years, the right to exercise, directly or through an intermediary, for his own account or for another person's account, any industrial, commercial, or liberal profession [74]. The criminal court shall order, in any case, publication in full or by except of the judgment in a journal of legal notices [75]. Publication expenses will be borne by the convicted person [76].

IMPEDIMENTS OF PETROLEUM FISCAL REGIMES IN CAMEROON

Though much effort has been made by the Cameroonian government to enact laws to strength oil companies' compliance with the petroleum taxes, there still exists some factors hindering compliance of petroleum fiscal regimes in Cameroon by oil companies.

High Taxes and Complex Petroleum Tax Regime

Cameroon is one of those countries with high rate of taxes. In the petroleum sector, there are not only different fiscal regimes that are complex in nature, which makes it difficult for many oil companies to understand, but the tax rates are also very exorbitant. The corporate income tax stands at 35 percent. This acts as a disincentive to many investors in this sector. The complexity is further illustrated by the fact that the tax system in the upstream oil sector is quite different from the downstream sector. In addition, the constant modification of the Finance Law every year worsens this complexity as new provisions are added, which makes it difficult for the oil companies to actually know which fiscal regime is applicable to their activity.

Incompetency and Corruption of Tax Personnel

The collection of taxes in the petroleum sector is done by tax administrators. Most of these administrators are not only incompetent but also corrupt. Most prefer to eat "under the table" than to bring checks to oil companies that fail to declare their actual revenue for tax purposes.

Poor Online Filing System

Though the Cameroonian Government has brought some innovations in terms of online payment of taxes, these efforts have yielded little efforts coupled with the constant power failures and internet disruptions. This disrupts the submission of petroleum fiscal documents online which take several days.

Irregular Publication of Data on Oil Revenue

Publication of revenue is a fundamental aspect of as indicated by EITI. However, this has not been the case in Cameroon, as oil companies rarely publish their oil revenue data, and even if they do, they falsify the data for fear of paying high taxes.

CONCLUSION

Based on the analysis of this paper article, the Cameroonian Government has designed a fiscal regime tailored to promote the development of its oil sector as it attracts oil companies, mostly international oil companies, and at the same time, maximize the revenue generated in this sector to foster economic development. Thus, to ensure that these oil companies adhere to the fiscal clauses contained in their contracts, the state has instituted sanctions against oil companies that fail to comply with the fiscal provisions contained in their contracts. However, despite these measures, there still exist some shortcomings in the petroleum fiscal regimes in Cameroon which have been succinctly addressed in this work. Based on these shortcomings, this work recommends that the tax rates applicable to the petroleum industry be reduced to encourage investors, the compliance procedures of petroleum taxes be simplified, and online methods of filing petroleum fiscal documents be improved upon firstly by making the necessary documents available online and internet improved upon, and finally by ensuring regular publication of oil company's revenue data to curb tax evasion.

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