

## **FISCAL REGIME - HYDROCARBONS**

UNOFFICIAL TRANSLATION ENDORSED BY OMNIS FROM THE OFFICIAL  
FRENCH VERSION

### **SUBTITLE II**

#### **ROYALTY AND DIRECT TAX ON HYDROCARBONS (IDH)**

**Article 01.01.26.-** Companies engaged in prospecting, research, exploration, exploitation, transport and transformation of hydrocarbons in the territory of the Republic of Madagascar and in Malagasy maritime areas, as these activities are defined in the Petroleum Code, are subject, because of their activities and the results of these activities, to the tax regime defined in this Subtitle.

### **FIRST CHAPTER**

#### **ROYALTY**

**Article 01.01.27.-** The companies referred to in Article 01. 01. 26 above are required to pay a mining royalty on hydrocarbons extracted from areas that are the subject of a mining exploitation title.

The royalty is fixed at the following rates and determined on the basis of the fiscal reference price defined as the international market price at the point of export less the costs of transport between the point of export and the field departure point.

The rates of the royalty are:

**1 °** For crude oil:

- 8 per cent for a production less than or equal to 25,000 barrels per day;
- 10 per cent for the production slice greater than 25,000 barrels per day and less than or equal to 50,000 barrels per day;
- 12 per cent for the production slice greater than 50,000 barrels per day and less than or equal to 75,000 barrels per day;
- 15 per cent for the production slice greater than 75,000 barrels per day and less than or equal to 100,000 barrels per day;

- 17 per cent for production slice greater than 100,000 barrels per day and less than or equal to 130,000 barrels per day;
- 20 per cent for the production slice greater than 130,000 barrels per day.

**2 °** For natural gas:

- 5 per cent for a production less than or equal to 12,000,000 standard cubic meters per day;
- 7.5 per cent for the production slice greater than 12,000,000 standard cubic meters per day and less than or equal to 24,000,000 standard cubic meters per day;
- 10 per cent for the production slice greater than 24,000,000 standard cubic meters per day.

**3 °** For heavy oil and bitumen:

The royalty rates for heavy oil or bitumen extracted from tar sands will be determined in the contracts.

**Article 01.01.28.-** The calculation of this royalty shall not include the quantities of hydrocarbons that are either consumed for the direct needs of production, reintroduced into the deposit, lost or unused, and related substances.

**Article 01.01.29.-** The royalty is paid, in kind or in cash, at the discretion of the Malagasy Government on the proposal of the specialized technical Body.

**Article 01.01.30.-** Taxes on petroleum products payable by companies will be distributed as follows:

- 50p. 100 for OMNIS;
- 50p. 100 for the State and the decentralized communities.

An order of the Minister in charge of tax regulations designates the body responsible for collecting the royalty owed by the national Company or the associated foreign company debtor, and determines their distribution as well as the share attributable to the specialized Technical Body without this being less than 50 per cent of the overall mass to be distributed.

## CHAPTER II

### DIRECT TAX ON HYDROCARBONS

**Article 01.01.31.-** Regardless of the royalty referred to in the previous chapter, the companies referred to in Article 01.01.26 above are subject to the payment of a Direct Tax On Hydrocarbons (IDH), representative and liberating of the Income Tax (IR) and Income Tax on Movable Capital (IRCM).

However, they remain subject to the common law tax regime with respect to other taxes and duties.

**Article 01.01.32.-** The Direct Tax on Hydrocarbons is based on the net profits that the companies referred to in article 01. 01. 26 above derive from all their activities of exploration and exploitation of hydrocarbon deposit (s) included in the mining exploration area, as well as the transportation of the products in the territory of the Republic of Madagascar.

**Article 01.01.33.-** An accounting of the operations referred to in Article 01.01.32 above shall be held by calendar year in order to draw up financial statements in accordance with the accounting plan in force showing the results of said operations as well as the elements of the assets and liabilities assigned to it.

**Article 01.01.34.-** The taxable net profit is determined according to the overall results of all types of operations carried out by the company, including in particular the assignment of any assets either during or at the end of the exploitation, the profits and miscellaneous earnings.

**Article 01.01.35.-** The Direct Tax on Hydrocarbons is established on the result obtained during each calendar year. If the exploitation activities start during the year, the first financial year must be closed on 31 December of that year for the calculation of the Direct Tax on Hydrocarbons.

**Article 01.01.36.-** For the determination of the net profit subject to the Direct Tax on Hydrocarbons, are taken into consideration, all products of any kind, sales of hydrocarbons extracted, assignment of assets, as well as all incidental and miscellaneous products except those resulting from an assignment of a percentage of interest of a contracting party.

From the total of these products are deducted all the charges necessary for the petroleum operations:

- the cost of raw materials, supplies and energy used or consumed;
- operational costs including, among others, overheads of all kinds, labor and personnel costs and social contributions;
- the cost of services provided by third parties and / or by the parent company of a contracting party for the purposes of petroleum operations;
- the rental costs of movable and immovable property of which the company is a tenant;
- the insurance contributions;
- the bank charges and agios incurred by the company to finance petroleum operations;
- depreciation recorded in the accounting by the company within the limits of the following maximum rates:
  - exploration expenditures 100 per cent per year;
  - investments in development and exploitation materials and equipment 25 per cent per year;
- Provisions set aside to cover clearly specified losses or charges, which current events make probable, with the exception of provisions for write-down of inventory and equity portfolios.
- the provisions for reconstitution of deposits in Madagascar, the use of which is provided for within a period of 4 years, are, if their resumption was not made within that period, reported to the results of the 5th year as from the date of their constitution;
- taxes and duties of a professional nature due during the financial year, the result of which is subject to taxation, excluding the Direct Tax on Hydrocarbons;
- the royalty paid under the conditions provided for in Articles 01.01.27 to 01.01.30 above.

The valorization of hydrocarbons, for the purposes of calculating the direct tax referred to above, is based on the international market price less the cost of transport between the delivery point and the export point.

**Article 01.01.37.-** Are not allowed as a deduction, all transactions, fines, confiscations and penalties of any kind, charged to offenders of the legal provisions governing prices, supplies, tax base and collection of taxes, exchange and labor regulations and all sums paid for violations of the regulations of the Petroleum Code and its implementing texts or contracts.

**Article 01.01.38.-** The deductions for losses or expenses listed in Article 01.01.36 above are exclusive of any other deductions provided for by the General Tax Code.

**Article 01.01.39.-** The calculation of the Direct Tax on Hydrocarbons is fixed in Article 01.01.14 of this Code.

The valuation of hydrocarbons for the purpose of calculating the Direct Tax on Hydrocarbons is based on the international market price less the cost of transport between the delivery point and the export point.

Taxable profit is rounded to the nearest thousand Ariary.

**Article 01.01.40.-** The deficit incurred, including depreciation, at the end of the exploration works may be deducted from the profits made during the exploitation years until the total amortization of the exploration expenses.

The deficit incurred, including depreciation, of an exploitation year can be deducted from the profit realized during the following years until the 7th included.

**Article 01.01.41.-** Companies which are subject to the IDH are required to subscribe each year a statement showing the results as defined in chapter II above obtained during the previous year within the following time:

- not later than 15 May of the following year for the financial year coinciding with the calendar year;
- not later than 15 November of the same year for the financial year ended June 30th;
- 4 months after the end of the financial year for other cases. In addition, they are subject to all the obligations provided for in Articles 01.01.12 to 01.01.25 of this Code.

**Article 01.01.42.-** All foreign companies which have entered into a risk service contract with a national hydrocarbon company are subject, because of their activities and the results of these activities, to Income Tax, which rate is aligned with that applicable to industrial enterprises as stipulated in Article 01.01.14 which will be representative of the Direct Tax on Hydrocarbons (IDH) referred to in Article 01.01.31.

**Article 01.01.43.-** For the determination of the total taxable profit of the companies referred to in Article 01.01.42 above, the base for each fiscal year shall be equal to the total value of the hydrocarbon products received by a company under its reimbursements and remunerations, after deduction of all costs and expenses reimbursed to that company during the same year under the contract of risk service.

The value of the above-mentioned hydrocarbon products shall be determined on the basis of the price fixed in accordance with Decree No. 81-24 of 28 October 1981, which would have been deducted from the price of transport between the field departure point and the export point for the crude sold outside, on the one hand, the field departure point and the delivery point inside Madagascar, for the crude intended for the local market, on the other hand.