

THE JOINT FISCAL AND TAXATION CODE 2013

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JOINT FISCAL AND TAXATION CODE CONCERNING THE JOINT MANAGEMENT AREA

The Government of the Republic of Mauritius and the Government of the Republic of Seychelles hereafter referred to as the 'Contracting States',

Desiring to conclude arrangements to provide a framework for the imposition of taxes on income arising out of natural resource activities in the JMA and related matters, and provide for the allocation of taxing rights between the Contracting States over this income in accordance with the *Treaty concerning the Joint Management of the Continental Shelf in the Mascarene Plateau Region signed by the Government of the Republic of Seychelles and the Government of the Republic of Mauritius at Clarisse House, Vacoas in Mauritius on 13 March 2012* ('the Treaty');

Recalling that Article 5 of the Treaty provides that the Contracting States have agreed to share revenue in respect of natural resource activities in the Joint Management Area ('JMA') equally;

Recalling also that Article 6 of the Treaty provides that the Contracting States shall agree upon a Joint Fiscal and Taxation Code applicable to income derived from natural resource activities in the JMA;

Mindful of the importance of exchanging tax related information as is necessary for carrying out the provisions of this Joint Fiscal and Taxation Code;

Exercising their powers under Article 3(c)(ii) of and Annex C to the Treaty;

Hereby Establish the Following:

SECTION A: GENERAL

ARTICLE 1

Short Title

This Code may be cited as the *Joint Fiscal and Taxation Code 2013*.



ARTICLE 2

Interpretation

In this Code, unless the context otherwise requires –

“Code” means the Joint Fiscal and Taxation Code 2013;

“Contracting State” means Mauritius or Seychelles, as the context requires;

“Mauritius” means the Republic of Mauritius and includes:

- (a) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
- (b) the territorial sea of Mauritius; and
- (c) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised.

“Seychelles” means the territory of the Republic of Seychelles as defined in Article 2 of the Constitution of the Republic of Seychelles;

“Corporation” means a body corporate incorporated under the law of either Contracting State;

“Designated Authority” means the Designated Authority established under Article 4(d) of the Treaty;

“Emoluments” means any advantage in money or money's worth which is:

- (a) salary, wages, leave pay, payment in lieu of leave, fee, overtime pay, perquisite, allowance, bonus, gratuity, commission or other reward or remuneration in respect of or in relation to the office or employment of an individual; and
- (b) superannuation, compensation for loss of office, pension, retiring allowance, annuity or other reward in respect of or in relation to past employment or loss or reduction of future income of an individual,

whether receivable by that individual or by any person who is or has been the spouse or dependent of that individual.

"Gross income" means the total amount of income derived by a licensed corporation without any deduction from that amount and computed in accordance with Article 10 of this Code;

"JMA" is the Joint Management Area established and defined in Article 3 of the Treaty;

"Licensed corporation" means a corporation licensed by the Designated Authority to carry out natural resource activities in the JMA;

"Natural resource activities" has the meaning set out in Article 1 of the Treaty and means all activities authorised or contemplated under a contract, permit or licence that are undertaken to explore and exploit natural resources in the JMA including development, initial processing, harvesting, production, transportation and marketing, as well as the planning and preparation for such activities;

"Person" includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes;

"Petroleum" has the meaning set out in Article 1 of the Treaty and means any naturally occurring hydrocarbon, whether in a gaseous, liquid, or solid state and any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state, together with other substances produced in association with such hydrocarbons, and includes any petroleum that has been returned to a reservoir;

"Petroleum activities" means activities carried out by a licensed corporation for exploring, prospecting or mining for petroleum in the JMA;

"Petroleum Agreement" means an agreement between the Designated Authority and any corporation for exploring, prospecting or mining for petroleum in the JMA;

"Resident" has the meaning assigned to it in Article 6 of this Code;

"Taxable income" for the purposes of Section B means the taxable income as calculated in accordance with Article 13 of this Code;

"Tax law" means:

- (a) in the case of Mauritius, the Income Tax Act 1995; and



- (b) in the case of Seychelles –
 - (i) the Business Tax Act 2009;
 - (ii) the Income and Non-Monetary Benefits Tax Act 2010;
and
 - (iii) the Revenue Administration Act 2009;

as the context requires;

“Tax year” means a calendar year or any period of twelve consecutive calendar months as approved by the Designated Authority;

“Treaty” means Treaty concerning the Joint Management of the Continental Shelf in the Mascarene Plateau Region signed by the Government of the Republic of Seychelles and the Government of the Republic of Mauritius at Clarisse House, Vacoas in Mauritius on 13 March 2012.

ARTICLE 3

Application of Code

This Code shall apply to the taxation of income generated directly or indirectly from natural resource activities in the JMA and from all acts, matters, circumstances, and things concerning, arising out of or connected with any such activity pursuant to the Treaty.

ARTICLE 4

Personal Scope

This Code shall apply to -

- (a) licensed corporations that are residents of one or both Contracting States;
- (b) individuals, whether resident of a Contracting State or elsewhere, employed by a licensed corporation to perform duties in the JMA; and

- (c) any person deriving income from activities falling within the scope of this Code.

ARTICLE 5

Source of Income

For the purposes of this Code, income derived by any person who is a resident of a Contracting State from activities in the JMA shall be deemed to be income derived from that Contracting State.

ARTICLE 6

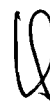
Resident

1. For the purposes of this Code, a person is considered resident of a Contracting State if the person satisfies the conditions provided for residence in accordance with the tax law of that Contracting State.

2. Where by reason of the provisions of paragraph 1 an individual is resident of both Contracting States, then his status shall be determined as follows -
 - (a) he shall be deemed to be a resident only of the State in which a permanent home is available to him; if a permanent home is available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

 - (b) if the State in which he has his centre of vital interests cannot be determined, or he does not have a permanent home available to him in both States, he shall be deemed to be a resident only of the State in which he has an habitual abode;

 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;



- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person, other than an individual, is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

4. Where an individual deriving emoluments from duties performed in the JMA is not a resident of either of the Contracting States, he shall be deemed to be a resident of the Contracting State of which his employer is a resident.

**SECTION B:
INCOME GENERATED FROM NATURAL RESOURCE ACTIVITIES**

PART 1: LIABILITY TO ROYALTY AND TAXES

**ARTICLE 7
Royalty and Taxes**

1. A licensed corporation shall be subject to the following royalty and taxes, as applicable, in respect of income generated from natural resource activities concerning petroleum in the JMA -

- (a) Petroleum Royalty;
- (b) Petroleum Income Tax;
- (c) Petroleum Additional Profits Tax;

2. The royalty and taxes referred to in paragraph 1 shall be levied in accordance with this Code and the relevant provisions of any applicable Petroleum Agreement.

ARTICLE 8
Filing of Returns and Payment of Tax

1. A licensed corporation shall, within 6 months following the end of each tax year -

- (a) submit a return in such form as may be approved by the Designated Authority; and
- (b) pay to the Designated Authority any tax due in accordance with that return,

in respect of Petroleum Income Tax and Petroleum Additional Profits Tax.

2. Where the Designated Authority is not satisfied with a return submitted under paragraph 1, it may issue a notice of assessment to the corporation specifying the amount of tax and penalty payable by the corporation and the date by which the tax shall be paid.

3. The law of the Contracting State where a licensed corporation is resident shall apply for the purposes of any offence relating to non-compliance, objections to assessments, appeals and recovery of taxes remaining unpaid.

PART 2: PETROLEUM ROYALTY

ARTICLE 9
Levy of Petroleum Royalty

1. Petroleum Royalty shall be levied in accordance with the provisions of the applicable Petroleum Agreement.

2. Petroleum Royalty is payable monthly to the Designated Authority not later than thirty (30) days after the end of the calendar month in the manner provided for under the applicable Petroleum Agreement.



PART 3: PETROLEUM INCOME TAX

ARTICLE 10

Gross Income

1. The gross income accruing to a licensed corporation in a tax year shall include -

(a) the market value of so much of the taxable petroleum disposed of by the corporation in sales at arm's length as was delivered by the corporation in the tax year;

(b) the market value of so much of the corporation's taxable petroleum disposed of by the corporation otherwise than in sales at arm's length as was delivered by the corporation in the tax year;

(c) the market value of so much of the corporation's taxable petroleum as was appropriated by the corporation in the tax year to refining or other processing without being disposed of;

(d) one-half of the market value of so much of the corporation's taxable petroleum as the corporation had at the end of the tax year not disposed of and not appropriated to refining or other processing or disposed of but not delivered.

2. For the purposes of this Article, a corporation's taxable petroleum includes -

(a) all the petroleum (except the petroleum referred to in paragraph (c) or (d) below) won and saved under the authority of a Petroleum Agreement during a period when the corporation was the sole party to the Petroleum Agreement; and

(b) the corporation's share of petroleum (except the petroleum referred to in paragraph (c) or (d) below) won and saved under the authority of a Petroleum Agreement when the corporation and one, or more than one, other corporations were parties to the petroleum agreement, determined on either or both of the following principles, namely:

(i) by reference to any operating agreement or agreements (howsoever described) deposited with the Designated Authority and providing for the division of all the petroleum won and saved under the authority of that Petroleum Agreement or won from a particular petroleum field under that authority, among those parties or between those parties and the Government or an agency of the Government, of the Contracting States, and no others;

(ii) in the case of petroleum so won and saved with respect to which no such operating agreement providing for its division as aforesaid is deposited with the Designated Authority, on the basis of the parties each being entitled to an equal share of each class of petroleum so won and saved,

but does not include:

(c) any petroleum which is delivered by the corporation pursuant to a Petroleum Agreement in discharge of the liability to pay royalty under the agreement; or,

(d) any petroleum to which the Government or any agency of the Government of the Contracting States, is entitled as a result of its participation in the development of a petroleum field.

3. Where the market value of any quantity of petroleum needs to be determined for the purposes of this article that value shall be deemed to be the market value of that quantity of petroleum agreed or determined or which would be agreed or determined for the purpose of calculating the royalty payable in respect of the petroleum won and saved under the petroleum agreement.

4. The gross income accruing to a licensed corporation in a tax year shall include miscellaneous income which may consist of –

(a) the amount or value of the consideration in money or money's worth received or receivable by the corporation in respect of the assignment in the tax year of the interest, or any part of the interest, of the corporation in a Petroleum Agreement;



(b) the amount or value of the consideration in money or money's worth received or receivable by the corporation in respect of the sale, in the tax year, of information relating to the existence and extent of petroleum deposits in the JMA;

(c) any amount (not being gross income under any other provisions in this Code) accruing in the tax year to the corporation as income from any of the corporation's petroleum activities in the JMA.

5. Where any person carries out, or is to carry out, on behalf of a corporation, work in the JMA subject to a Petroleum Agreement, and the consideration, or any part of the consideration, for the person doing so is the assignment to the person of any part of the interest of the corporation in that Petroleum Agreement, the value of that work is not gross income accruing to the corporation in any tax year, but without prejudice to consideration (if any), other than work, for the assignment being treated as gross income.

ARTICLE 11

Allowable Expenditure

1. Any expenditure or loss on such items as set out in Third Schedule of the Petroleum Agreement shall be deductible from gross income for the purposes of calculating the taxable income concerning the determination of Petroleum Income Tax.

2. Such expenditure or cost referred to in paragraph 1 may relate *inter alia* to the following -

- (a) Exploration expenditures;
- (b) Development expenditures;
- (c) Operating expenditures;
- (d) General administrative expenditures;
- (e) Labour and associated labour costs;
- (f) Transportation;
- (g) Charges for Services;
- (h) Property and Equipment;
- (i) Material;
- (j) Annual rental and levies;
- (k) Insurance and losses;
- (l) Legal expenses;

- (m) Training costs; and
- (n) General administrative costs.

ARTICLE 12

Costs Not-Allowable

The following costs and expenditure shall not be allowable in the computation of Petroleum Income Tax -

- a) Costs incurred before the entry into force of the applicable Petroleum Agreement;
- b) Petroleum marketing and transportation costs beyond the corporation's actual loading point;
- c) Cost of Arbitration and the Sole Expert in respect of any dispute under a Petroleum Agreement;
- d) Fines and penalties for violation of any law, rule or regulation;
- e) Costs incurred as a result of misconduct or negligence of the corporation;
- f) Any reserve or provision of any kind;
- g) Any costs associated with a Parent Company Guarantee or similar credit support mechanism;
- h) Donations and charitable contributions not endorsed by the Designated Authority;
- i) Research expenditure pertaining to petroleum exploration and development equipment, materials and techniques.

ARTICLE 13

Computation of Taxable Income

1. The taxable income of a licensed corporation in respect of a tax year shall be the difference between the gross income accruing to the corporation in the tax year and the aggregate amount of allowable expenditure of the corporation for that tax year.

2. Where the aggregate of allowable expenditure exceeds the amount of gross income in respect of a tax year, the difference is an allowable loss that is available for set-off against the income of the following and subsequent years.



ARTICLE 14
Rate of Petroleum Income Tax

The Petroleum Income Tax payable by a licensed corporation for a tax year shall be calculated on the taxable income of the corporation at the rate of 35 per cent.

PART 4: PETROLEUM ADDITIONAL PROFITS TAX

ARTICLE 15
Levy of Petroleum Additional Profits Tax

Petroleum Additional Profits Tax shall be levied and payable to the Designated Authority in accordance with the relevant provisions of the applicable Petroleum Agreement.

SECTION C:
INCOME GENERATED FROM OTHER ACTIVITY RELATED
TO OR CONNECTED WITH NATURAL RESOURCE ACTIVITIES
IN THE JMA

ARTICLE 16
Attribution of Income

1. Any income or gains derived by a person from any activity in the JMA not covered by Section B shall be deemed to be derived from each Contracting State in equal proportion for the purpose of calculating the tax payable on such income or gains in accordance with the domestic tax law of that Contracting State.

2. Notwithstanding the domestic tax laws of the Contracting States, where a person makes a gain from disposal of any of his shares held in a licensed corporation, the gain shall be deemed to be income taxable in the Contracting State of which the licensed corporation is a resident.

ARTICLE 17
Taxation of Employees

The emoluments of an individual in the employment of a licensed corporation engaged in activities covered by this Code shall be subject to tax in accordance with the tax law of the Contracting State of which the employee is a resident.

ARTICLE 18
Tax Treatment of Dividends

Notwithstanding the provisions in the tax law of a Contracting State in relation to the taxation of dividends, any dividend paid by a licensed corporation shall be exempt from tax in the Contracting State of which the corporation is a resident.

ARTICLE 19
Exchange of Information

1. The Contracting States shall exchange such information as they think necessary for the implementation of this Code.

2. The Contracting States shall by mutual agreement settle the mode of application for the exchange of information under paragraph 1.

ARTICLE 20
Amendments

This Code may be amended by mutual consent of the Contracting States. Any such amendment shall enter into force in accordance with the same legal procedure presented under Article 21.



ARTICLE 21

Entry into Force

Each of the Contracting States shall notify the other, by means of exchange of diplomatic notes, the completion of the procedures required by its law for the bringing into force of this Code. This Code shall enter into force on the date of receipt of the later notification.

IN WITNESS THEREOF, the undersigned representatives duly authorized thereto by their respective Governments, have signed this Code.

Done atin two originals on
day of of the year two thousand and thirteen in the English
language.

For the Government of the Republic of Mauritius

For the Government of the Republic of Seychelles

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