ACT

ARRANGEMENT OF SECTIONS

THE EXTRACTIVE INDUSTRIES REVENUE ACT, 2018

ARRANGEMENT OF SECTIONS

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LANBUK.COM LANBUK SIERRA LEONE

Passed in Parliament this *day of* , in the year of our Lord two thousand and Eighteen.

UMAR PARAN TARAWALLY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

UMAR PARAN TARAWALLY,
Clerk of Parliament.

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTING DEPARTMENT, SIERRA LEONE.

SIGNED this *day of July, 2018.*

HIS EXCELLENCY JULIUS MAADA BIO,
President.

LS

No. **2018**

Sierra Leone

The Extractive Industries Revenue Act, 2018

Short title.

Being an Act to provide for and coordinate various taxes and charges on extractive industries, the regulation of fiscal aspects of extractive industry agreements and for other related matters.

[ ] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

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PART I – PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires–

"adjusted cost base" of an asset has the meaning given in section 2 of the Income Tax Act, 2000;

"approved decommissioning plan" means a decommissioning plan approved by the Minister responsible for the management of petroleum matters;

"approved development and operation plan" means a plan approved under section 55 of the Petroleum (Exploration and Production) Act, 2011;

"approved fiscal stability clause" has the meaning given in section 40;

"associate" has the meaning given in section 2 of the Income Tax Act, 2000;

"bonus payment" means a bonus paid on the grant, transfer or assignment of a large-scale mining licence or petroleum licence, but does not include a fee prescribed by the Mines and Minerals Act, 2009 or the Petroleum (Exploration and Production) Act, 2011 or regulations made under those Acts;

"Commissioner-General" means the Commissioner-General appointed under the National Revenue Authority Act, 2002;

"debt claim" has the meaning given in section 2 of the Income Tax Act, 2000;

"debt obligation" has the meaning given in section 2 of the Income Tax Act, 2000;

"decommissioning fund" means a fund established under section 78 of the Petroleum (Exploration and Production) Act, 2011;

"derivative instrument" has the meaning prescribed by regulations and, in the absence of regulations, takes its meaning from generally accepted accounting principles;

"development and operation area" means the area covered by an approved development and operation plan;

"excluded expenditure" means-

(a) income tax, mineral resource rent tax and petroleum resource rent tax;

(b) bribes and expenditure incurred in corrupt practices;

(c) interest, penalties and fines payable to a government for breach of any law or a political subdivision of a government of any country; and

(d) expenditure incurred-

(i) as a consequence of non-fulfilment of contractual obligations under an extractive industry agreement or other agreement with a government or a political subdivision of a government of any country; or

(ii) on insurance, indemnity, guarantee or other security against such non-fulfilment;

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"exploration licence" has the meaning given in section 1 of the Mines and Minerals Act, 2009;

"exploration licence area" has the meaning given in section 1 of the Mines and Minerals Act, 2009;

"exploration operations"–

(a) with respect to a mineral right, has the meaning given in section 1 of the Mines and Minerals Act, 2009; and

(b) with respect to a petroleum right, means exploration within the meaning given in section 1 of the Petroleum (Exploration and Production) Act, 2011;

"extractive industry agreement" means an agreement concluded with-

(a) the holder of a mineral right that pertains to a licence granted under section 23 of the Mines and Minerals Act, 2009; or

(b) the holder of a petroleum right that pertains to a permit or licence granted under sections 23 (reconnaissance permit), 41 (petroleum licence) or 76 (pipeline permit) of the Petroleum (Exploration and Production) Act, 2011;

"extractive industry producer" means a person engaged in `mining under a mining licence or production activities under a petroleum licence, but excludes a person exempt from mineral resource rent tax;

"financial cost" has the meaning given in sub section (5) of section 35 of the Income Tax Act, 2000;

"financial gain" has the meaning given in subsection (5) of section 35 of the Income Tax Act, 2000;

"foreign exchange instrument" has the meaning prescribed by regulations and, in the absence of regulations, takes its meaning from generally accepted accounting principles;

"generally accepted accounting principles" means the International Financial Reporting Standards;

"large-scale mining licence" has the meaning given in section 1 of the Mines and Minerals Act, 2009;

"licence area" means–

(a) with respect to mineral operations, the area covered by the mineral right in question; and

(b) with respect to petroleum operations, has the meaning given in section 1 of the Petroleum (Exploration and Production) Act, 2011;

"mineral" has the meaning given in section 1 of the Mines and Minerals Act, 2009;

"mineral operations" means exploration operations, mining operations or reconnaissance operations conducted with respect to a mineral right;

"mineral right" has the meaning given in section 1 of the Mines and Minerals Act, 2009;

"mining area" has the meaning given in section 1 of the Mines and Minerals Act, 2009;

"mining licence" means an artisanal, small-scale or large-scale mining licence granted under the Mines and Minerals Act, 2009;

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"mining operations" has the meaning given in section 1 of the Mines and Minerals Act, 2009, but excludes processing of minerals;

"National Revenue Authority " means the National Revenue Authority established under the National Revenue Authority Act, 2002 (Act No 11of 2002);

"overriding royalty" means a periodic payment made by a person (other than a dividend) to the extent to which it is directly or indirectly calculated by reference to the profitability, output or natural resources extracted by the person or an associate of the person;

"petroleum" has the meaning given in section 1 of the Petroleum (Exploration and Production) Act, 2011;

"petroleum operations" has the meaning given in section 1 of the Petroleum (Exploration and Production) Act, 2011 and includes "reconnaissance" as defined in that section, but excludes processing of petroleum;

"petroleum licence" has the meaning given in section 1 of the Petroleum (Exploration and Production) Act, 2011;

"petroleum right" has the meaning given in section 1 of the Petroleum (Exploration and Production) Act, 2011;

"precious stones" has the meaning given in paragraph (b) of the definition of "precious mineral" in section 1 of the Mines and Minerals Act, 2009;

"processing" has the meaning prescribed by regulations but excludes activities of a processing nature that are ancillary to mineral operations or petroleum operations;

"production activities" with respect to petroleum operations has the meaning given in section 1 of the Petroleum (Exploration and Production) Act, 2011, but excludes processing of petroleum;

"reconnaissance licence" has the meaning given in section 1 of the Mines and Minerals Act, 2009;

"reconnaissance operations"–

(a) with respect to a mineral right, has the meaning given in section 1 of the Mines and Minerals Act, 2009; and

(b) with respect to a petroleum right, means "reconnaissance" within the meaning given in section 1 of the Petroleum (Exploration and Production) Act, 2011;

"relevant financial cost" and "relevant financial gain" mean–

(a) a derivative or foreign exchange instrument; or

(b) a financial cost or a financial gain, respectively, with respect to a debt claim or debt obligation denominated in a currency other than that in which the person accounts for the purposes of this Act, but excluding the payment or receipt of standard interest;

"revenue" means revenue within the meaning given in section 2 of the National Revenue Authority Act, 2002 that is imposed with respect to a revenue law;

"revenue law" means a law referred to in the First Schedule to the National Revenue Authority Act, 2002 including a treaty affecting such a law;

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"separate mineral operation" has the meaning given in section 5;

"separate petroleum operation" has the meaning given in section 23;

"service fee" has the meaning given in section 117 of the Income Tax Act, 2000;

"special stones" means a precious stone with a market value above 500,000 United States Dollars;

"underlying ownership or control" has the meaning given in section 2 of the Income Tax Act, 2000; and

"year of assessment" has the meaning given in section 2 of the Income Tax Act, 2000.

(2) To the extent that a term used in this Act is not otherwise defined, the term shall have a meaning in this Act that is consistent with any meaning given to that term in the Income Tax Act, 2000.

(3) Subject to this Act, no law, whether enacted before or after the commencement of this Act, shall be interpreted so as to provide an exemption from royalties, income tax, mineral resource rent tax or petroleum resource rent tax as provided for in this Act.

Unauthorised Operations

2 (1) This Act shall apply to certain operations authorised by mineral rights and petroleum rights issued under the Mines and Minerals Act, 2009 and the Petroleum (Exploration and Production) Act, 2011.

(2) This Act shall extend to a person conducting unauthorised operations that should be conducted under a mineral right or petroleum right.

(3) Subsection (2) applies notwithstanding any consequences under the Mines and Minerals Act, 2009 and the Petroleum (Exploration and Production) Act, 2011 by reason of the person conducting unauthorised operations.

PART II–MINES AND MINERALS

Royalties

3. (1) The holder of a mineral right shall pay royalties for minerals obtained pursuant to the right.

(2) The royalties referred to in subsection (1) shall be calculated by applying the relevant rates set out in paragraph 1 of the First Schedule to the market value of the minerals obtained as determined under paragraph 2 of the First Schedule.

(3) The holder of a mineral right shall pay royalties at the time prescribed in paragraph 3 of the First Schedule and in accordance with the procedure outlined in Part V.

(4) Notwithstanding other provisions in this Act, the Minister responsible for finance may, in consultation with the Ministry responsible for mines and mineral resources, prescribe by statutory instrument special rules with respect to precious stones and special stones obtained under an artisanal mining licence for the purposes of-

(a) determining the market value of the stones; and

(b) setting arrangements as to the time and method of collection of royalties, including collection from dealers and other third parties.

Income tax

4. (1) A person conducting mineral operations shall be subject to income tax with respect to operations under the Income Tax Act 2000 and this Act.

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(2) The income tax for mineral operations for a year of assessment shall be calculated by applying the rate set out in paragraph 5 of the First Schedule to a person's chargeable income from mineral operations for the year and if the person has other chargeable income, that income shall be charged at the appropriate rate under the Income Tax Act, 2000.

(3) For the purposes of calculating a person's chargeable income from mineral operations-

(a) each separate mineral operation shall be treated as an independent business and the person shall prepare accounts for that business separate from any other activity of the person; and

(b) the person shall calculate chargeable income, loss and income tax liability for the business independently for each year of assessment.

(4) Section 95 of the Income Tax Act, 2000 shall apply–

(a) to arrangements between a separate mineral operation and other activities of the person conducting the mineral operation (including other mineral operations or processing operations of the person); and

(b) as though the arrangements were conducted between associated persons.

(5) Pursuant to subsection (4), the transfer of an asset to or from a separate mineral operation shall be treated as an acquisition and disposal of the asset.

(6) Where two or more persons hold a mineral right, they shall calculate their chargeable income from mineral operations with respect to the right separately, but do so as though they were associated persons.

(7) Transfer pricing in accordance with section 95 of the Income Tax Act, 2000 shall apply to subsection (6).

Separate mineral

5. (1) Subject to this section, mineral operations pertaining to each mineral right shall constitute a separate mineral operation.

(2) The following rules shall apply where a person who holds an exploration licence is subsequently granted a mining licence and the mining area falls wholly within the exploration licence area–

(a) mineral operations conducted in respect of the exploration licence to the date of grant of the mining licence shall be treated as conducted with respect to the mining licence and therefore the same separate mineral operation as conducted under that mining licence;

(b) from the date of grant of the mining licence, mineral operations conducted with respect to the exploration licence shall be treated as a new separate mineral operation.

(3) Where a person who holds an exploration licence–

(a) is subsequently granted a mining licence and the mining area falls wholly within the exploration licence area (whether or not prior mining licences have been granted with respect to the exploration licence area); and

(b) subsequently (but before any further mining licence is granted with respect to the exploration area) relinquishes all of the exploration licence area (excluding the mining area referred to in paragraph (a) or a mining area under an earlier mining licence),

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the mineral operations conducted with respect to the relinquished exploration licence area referred to in paragraph (b) from the date the mining licence referred to in paragraph (a) is granted, shall be treated as conducted with respect to the mining licence and therefore the same separate mineral operation as conducted under that mining licence.

(4) The following rules shall apply where a person who holds a reconnaissance licence is subsequently granted an exploration licence-

(a) the mineral operations conducted with respect to the reconnaissance licence to the date of grant of the exploration licence shall be treated as conducted with respect to the exploration licence and therefore the same separate mineral operation as conducted under that exploration licence;

(b) from the date of grant of the exploration licence, mineral operations conducted with respect to the reconnaissance licence shall be treated as a new separate mineral operation.

(5) The rule in paragraph (a) of subsection (4) applies for the purposes of applying subsection (2).

(6) The Minister responsible for finance, in consultation with the Minister responsible for mines and mineral resources, may by statutory instrument make further provision for the determination of separate mineral operations including with respect to adjacent mineral rights and merging of mineral rights.

Income from mineral operations

6. In calculating a person's income from a separate mineral operation for a year of assessment the following shall be included-

(a) receipts derived or treated under section 95 of the Income Tax Act 2000 as derived during the year from the disposal of minerals obtained from the licence area;

(b) compensation received, whether under a policy of insurance or otherwise, in respect of loss or destruction of minerals from the licence area;

(c) amounts received in respect of the sale of information pertaining to the mineral operations or mineral reserves;

(d) amounts required to be included under section 10 in respect of a surplus in a rehabilitation fund;

(e) amounts required to be included under paragraph 6 of the First Schedule, including with respect to the disposal of an interest in a mineral right; and

(f) any other amounts derived by that person during the year from or incidental to the operation that are included in calculating income under the Income Tax Act, 2000.

Deductions for mineral operations

7. (1) Subject to this section , in calculating a person's chargeable income from a separate mineral operation for any year of assessment the following shall be deducted-

(a) royalties, annual charges and rent paid by that person under this Act or the Mines and Minerals Act, 2009 with respect to a mineral right, but not exceeding any liability under the relevant extractive industry agreement;

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(b) expenditure (other than financial costs) incurred in respect of the mineral operation on the following, but only if it has been expensed in the person's financial accounts and that expensing is in accordance with generally accepted accounting principles-

(i) expenditure on reconnaissance and exploration operations; and

(ii) expenditure on waste removal, overburden stripping, shaft sinking and like activities as may be prescribed by regulations;

(c) capital allowances granted with respect to the mineral operation and calculated in accordance with paragraph 6 of the First Schedule including with respect to the disposal of an interest in a mineral right;

(d) contributions to and other expenses incurred in respect of a rehabilitation fund for the mineral operation as required under the extractive industry agreement or rehabilitation plan approved by the Minister responsible for mines and mineral resources;

(e) expenses incurred by that person in the course of reclamation, rehabilitation and closure of a mineral operation, but only to the extent funds in the relevant rehabilitation fund are not yet available or are inadequate; and

(f) any other amounts incurred by that person during the year directly in the course of the mineral operation that may be deducted under the Income Tax Act, 2000.

(2) No deduction shall be allowed in calculating chargeable income from a separate mineral operation–

(a) under paragraphs (b), (e) and (f) of subsection (1) of section 32 or sections 37, 40, 43 or 44 of the Income Tax Act, 2000;

(b) for any amount unless it is incurred in–

(i) the acquisition or improvement of a valuable asset used in the operation; or

(ii) securing services or facilities for the operation and the amount constitutes income of the recipient that has a source in Sierra Leone in accordance with section 89 of the Income Tax Act, 2000;

(c) for an allowable loss under sections 32 and 32A of the Income Tax Act, 2000, except for an allowable loss in conducting the operation as provided for in section 8;

(d) to the extent the amount does not comply with section 95 of the Income Tax Act, 2000;

(e) for bonus payments; or

(f) for excluded expenditure or overriding royalties.

(3) In calculating a person's chargeable income from a separate mineral operation for a year of assessment, relevant financial costs incurred during the year may be deducted only to the extent that relevant financial gains are included in calculating the income.

(4) The limitation referred to in subsection (3) shall be in addition to that provided in section 35 of the Income Tax Act, 2000.

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(5) Any excess financial cost for which a deduction is not available under subsection (3) shall be carried forward and treated as a financial cost incurred in the following year of assessment and paragraphs (b) and (c) of section 8 of this Act and section 88 of the Income Tax Act, 2000 shall apply to restrict the carry forward of that excess.

(6) Expenditure referred to in subparagraphs (i) and (ii) of paragraph (b) of subsection (1) that–

(a) is not expensed in the person's financial accounts in accordance with generally accepted accounting principles; and

(b) does not otherwise fall to be included in the adjusted cost base of an asset, is not deductible and shall be treated as the cost of a depreciable asset for which capital allowances are granted with respect to a separate mineral operation in accordance with paragraph 6 of the First Schedule.

(7) The Minister responsible for finance, in consultation with the Minister responsible for mines and mineral resources, may by statutory instrument-

(a) make further provision for the deduction of amounts in calculating income from mineral operations; and

(b) where goods or services are supplied to a mineral right holder by an associated person, limit the deduction for any amount incurred by the right holder to the no profit amount referred to in subsection (8).

(8) The no profit amount shall be the actual costs incurred by the associated person in the provision of the goods or services, but shall exclude any cost incurred in favour of another associated person.

8. Paragraph (c) of subsection (1) of section 32 and section 32A of the Income Tax Act ,2000 shall apply to allowable losses of a person from a separate mineral operation with the following modifications- Losses from mineral operations.

(a) tax payable may be reduced to 15 percent of the tax that would be due if losses were not carried forward;

(b) a loss may not be carried forward after the latter of the following–

(i) the tenth year of assessment from the year of assessment in which the loss was incurred; and

(ii) the tenth year of assessment from the year of assessment in which commercial mining production commenced;

(c) losses shall be used in the order in which they are incurred; and

(d) losses from a separate mineral operation may be deducted only in calculating future chargeable income from that operation and not chargeable income from any other mineral operations or non-mineral operations or activities.

9. (1) Where a company that holds a mineral right suffers a 25 percent or more change in its underlying ownership or control the company shall be treated as disposing of a proportionate interest in its mineral right and immediately reacquiring that interest. Indirect disposal of mineral rights

(2) Where subsection (1) applies, the company shall be treated as–

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(a) receiving for the disposal, consideration equal to the market value of the proportion of the right treated as disposed of; and

(b) incurring in respect of the reacquisition an equal amount.

(3) A company that suffers a change of ownership or control referred to in subsection (1) shall notify the Commissioner-General when it files its next tax return under section 97 of the Income Tax Act, 2000.

(4) A company that fails to comply with subsection (3) is liable for a penalty equal to 30 percent of the market value of the interest in the mineral right treated as disposed of under subsection (1).

(5) This section shall be without prejudice to direct disposals of mineral rights and the application of section 88 of the Income Tax Act, 2000 to a company that holds a mineral right.

Rehabilitation funds.

10. (1) The holder of a rehabilitation fund shall be exempted from tax for the following-

(a) the receipt of contributions to the fund that are deductible for a mineral right holder under paragraph (d) of subsection (1) of section 7; and

(b) amounts (including interest) accumulated in or withdrawn from the fund.

(2) Where there is a surplus in a rehabilitation fund and the person conducting the relevant separate mineral operation–

(a) completes rehabilitation in accordance with the approved rehabilitation plan so as to be entitled to receive the surplus; or

(b) breaches an approved rehabilitation plan,

the surplus shall be included in calculating the chargeable income of the person from the separate mineral operation for the year of assessment in which the event referred to in paragraph (a) or (b) occurs.

(3) In addition to the consequences referred to in subsection (2), the person may be liable for mineral resource rent tax with respect to the surplus.

Minimum tax and small micro tax-payers.

11. (1) Part V of the Income Tax Act,2000 shall not apply to mineral operations conducted under a large –scale mining licence.

(2) Where a person conducting mineral operation qualifies for treatment under subsection (2) of section 4 and Part V of the First Schedule of the Income Tax Act, 2000, the provisions shall apply for the purposes of determining the person's income tax liability with respect to the mineral operations notwithstanding section 4 of this Act.

Mineral Resource rent tax imposed.

12. (1) A holder of a mining licence that has accumulated net receipts for a year of assessment from a separate mineral operation shall pay mineral resource rent tax.

(2) The amount of mineral resource rent tax referred to in subsection (1), shall be calculated by applying the rate specified in paragraph 7 of the First Schedule to the accumulated net receipts for the year.

(3) Subject to section 17, for the purposes of calculating mineral resource rent tax, subsection (2) of section 5 shall not apply.

(4) Mineral resource rent tax shall be imposed in addition to any other tax or charge, including income tax.

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(5) Mineral operations conducted under an artisanal or small-scale mining licence shall be exempt from mineral resource rent tax unless-

(a) specifically prescribed by regulations made under this Act; or

(b) section 96 of the Income Tax Act, 2000 applies.

Accumulated net receipts and accumulated net expenditure

13. Accumulated net receipts of a separate mineral operation for a year of assessment shall be to the extent to which net-

(a) receipts of the operation for the year exceed accumulated net expenditure for that operation for the previous year of assessment (if any) as increased by the uplift specified in paragraph 8 of the First Schedule.

(b) expenditure for the operation for the year (if any) plus accumulated net expenditure for that operation for the previous year of assessment (if any) as increased by the uplift specified in paragraph 8 of the First Schedule, exceed net receipts of the operation for the year (if any).

Net receipts and net expenditure

14. (1) Net receipts of a separate mineral operation for a year of assessment shall be to the extent to which gross receipts of the operation for the year exceed deductible expenditure of the operation for that year.

(2) Net expenditure of a separate mineral operation for a year of assessment shall be the extent to which deductible expenditure of the operation for the year exceeds gross receipts of the operation for that year.

Gross Receipts

15. (1) Subject to this section, gross receipts of a separate mineral operation for a year of assessment shall be the sum of the following gross amounts without deduction–

(a) gross amounts directly included in calculating income from the mineral operation for the year as stipulated under section 6, including service fees and amounts received from the disposal of minerals and other trading stock;

(b) gross positive amounts that enter into the calculation of a net amount that is included in calculating income from the mineral operation for the year as stipulated under section 6, including consideration received on the disposal of depreciable, business or other assets;

(c) gross positive amounts that enter into the calculation of a net amount (such as a loss) that is deductible in calculating chargeable income for the year where the amount is referred to in section 7, including amounts of the type referred to in paragraph (b); and

(d) with respect to a surplus in a rehabilitation fund, any amount provided for in section 19.

(2) Gross receipts of a separate mineral operation shall not include–

(a) interest and other financial gains, including and treated as interest income under the Income Tax Act, 2000; or

(b) subject to section 18, consideration received for the transfer of a mineral right.

(3) An amount referred to in subsection (1)–

(a) shall be determined in accordance with section 95 of the Income Tax Act, 2000; and

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(b) may be included in the gross receipts of a year of assessment irrespective of whether or not it is actually received during that year.

Deductible Expenditure

16. (1) Subject to this section, the deductible expenditure of a separate mineral operation for a year of assessment shall be the sum of the following gross amounts–

(a) gross amounts in respect of the mineral operation that are directly deducted in calculating chargeable income for the year and where the amounts are referred to in section 7;

(b) gross expenditure included during the year in the adjusted cost base of a depreciable or business asset used in the mineral operation;

(c) other gross expenditure that enters into the calculation of a net amount that is included in calculating income from the mineral operation for the year;

(d) other gross expenditure that enters into the calculation of a net amount (such as a loss) that is deductible in calculating chargeable income from the mineral operation for the year where that amount is referred to in section 7;

(e) the amount of income tax payable with respect to the mineral operation for the year as calculated under section 4; and

(f) with respect to the year of commencement of mining operations, any amount provided for in section 17.

(2) The deductible expenditure of a separate mineral operation shall not include–

(a) interest or other financial costs, including an amount treated as interest under the Income Tax Act, 2000;

(b) amounts claimed as capital allowances, but not to limit a deduction under paragraph (b) of subsection (1);

(c) losses referred to in section 8 of this Act and paragraph (c) of subsection (1) of section 32 and section 32A of the Income Tax Act, 2000;

(d) subject to section 18, amounts included in the adjusted cost base of a mineral right including bonus payments; and

(e) payments to acquire an interest in the profits, receipts or expenditures of the mineral operation and payments made with respect to such interests.

(3) Expenditure shall not be deductible expenditure to the extent that it exceeds the requirements of section 95 of the Income Tax Act, 2000.

Year of Commen-Cement

17. (1) With respect to the year of assessment in which a person commences mining operations under a mining licence and for the purposes of allowing a deduction for exploration expenditure incurred during the seven years prior to the commencement, the deduction allowed under paragraph (f) of subsection (1) of section 16 shall be equal to the amount by which relevant deductible expenditure exceeds relevant gross receipts.

(2) No amount shall be deductible under paragraph (f) of subsection (1) of section 16 unless the relevant deductible expenditure and relevant gross receipts have been audited and certified as correct by the Commissioner-General.

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(3) The Minister responsible for finance may by statutory instrument make regulations prescribing the time limit within which the Commissioner-General should conduct the audit and certification.

(4) In this section–

(a) "relevant deductible expenditure" means expenditure–

(i) incurred by the person exclusively on exploration in the relevant licence area and no more than seven years before the date of commencement referred to in subsection (1);

(ii) of a type referred to in section 16 (except paragraph (f) of subsection (1) of section 15), presuming that the mining operation in question is that conducted under the exploration licence;

(b) "relevant gross receipts" means receipts-

(i) derived by a person from exploration in a licence area and not more than seven years before the date of commencement referred to in subsection (1);

(ii) of a type referred to in section 15, presuming that the mining operation in question is that conducted under the exploration licence; and

(c) "relevant licence area" means that part of a licence area under an exploration licence that was surrendered in favour of the grant of the mining licence with respect to which mining operations referred to in subsection (1) are conducted.

Transfer of mineral rights

18. (1) Where a person transfers an interest in a mineral right during a year of assessment together with the person's interest the separate mineral operation conducted under that right, for the purposes of calculating any mineral resource rent tax payable by the transferee, the transferee shall be treated as–

(a) having the same accumulated net expenditure for the mineral operation for the year of assessment preceding the transfer as the transferor had ;

(b) incurring the same deductible expenditure for the mineral operation during the year of assessment of the transfer and to the time of transfer as the transferor did;

(c) deriving the same gross receipts for the mineral operation during the year of assessment of the transfer and to the time of transfer as the transferor did; and

(d) having paid the same amount of instalments under section 45 during the year of assessment of the transfer and to the time of transfer as the transferor did.

(2) Where a person transfers only a part of an interest in a mineral right, the amounts referred to in subsection (1) shall be apportioned according to the amount of the interest transferred.

(3) Where expenditure, receipts or payments are attributed to a transferee under this section, those expenditure, receipts or payments shall no longer be attributed to the transferor.

Rehabilitation fund positive balance

19 (1) In the circumstances provided for in section 10, the surplus in a rehabilitation fund shall be included in calculating the chargeable income of a person from a separate mineral operation.

(2) The inclusion referred to in subsection (1) shall also be included in gross receipts for the purposes of calculating mineral resource rent tax.

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Processing

20. (1) A mineral right holder conducting processing of minerals shall be subject to income tax for those activities

(2) Paragraph (d) of section 6, paragraphs (d) and (e) of subsection (1) of section 7 and section 10 shall applyin calculating a mineral right holder's income from a business that includes processing of minerals, but only to the extent the expenses and fund relate to that processing.

(3) Paragraph (c) of subsection (1) of section 32 and section 32A of the Income Tax Act, 2000 shall apply to allowable losses of a person from conducting a business that includes processing of minerals so that tax payable may be reduced to 15 percent of the tax that would be due if losses were not carried forward.

PART III–PETROLEUM

Royalties Imposed

21. (1) The holder of a petroleum right shall pay royalties for petroleum obtained pursuant to the right.

(2) The royalties referred to in subsection (1) shall be calculated by applying the relevant rates set out in paragraph 1 of the Second Schedule to the market value of the petroleum obtained as determined under paragraph 2 of the Second Schedule.

(3) The holder of a petroleum right shall pay royalties at the time prescribed in paragraph 3 of the Second Schedule and in accordance with the procedure outlined in Part V.

(4) Petroleum that is returned to a natural reservoir shall not be treated as obtained until it is retrieved from the reservoir, with the approval of the Minister responsible for management of petroleum matters,.

(5) Royalties may be paid in kind in accordance with section 107 of the Petroleum (Exploration and Production) Act, 2011, provided that no more than fifteen percent of royalties payable under a petroleum right for a year of assessment may be paid in kind unless the Minister responsible for finance agrees.

Income Tax

22. (1) A person conducting petroleum operations shall be subject to income tax for the operation as prescribed under the Income Tax Act 2000

(2) The income tax for petroleum operations for a year of assessment shall be calculated by applying the rate set out in paragraph 4 of the Second Schedule to a person's chargeable income from petroleum operations for the year and if the person has other chargeable income, that income shall be charged at the appropriate rate under the Income Tax Act, 2000.

(3) For the purposes of calculating a person's chargeable income from petroleum operations–

(a) each separate petroleum operation shall be treated as an independent business and the person shall prepare accounts for that business separate from any other activity of the person; and

(b) the person shall calculate chargeable income, loss and income tax liability for the business independently for each year of assessment.

(4) Section 95 of the Income Tax Act, 2000 shall apply–

(a) to arrangements between a separate petroleum operation and other activities of the person conducting the petroleum operation (including other petroleum operations or refining or other processing operations of the person); and

(b) as though the arrangements were conducted between associated persons.

(5) Pursuant to subsection (4), the transfer of an asset to or from a separate petroleum operation shall be treated as an acquisition and disposal of the asset.

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(6) Where two or more persons hold a petroleum right, they shall calculate their chargeable income from petroleum operations with respect to that right separately, but shall do so as though they were associated persons.

(7) Transfer pricing in accordance with section 95 of the Income Tax Act, 2000 shall apply to subsection (6).

Separate petroleum operations

23. (1) Subject to this section, petroleum operations pertaining to each petroleum right shall constitute a separate petroleum operation.

(2) The following rules shall apply after approval of a development and operation plan within a petroleum licence area–

(a) petroleum operations conducted pursuant to the petroleum right to the date of approval and petroleum operations conducted with respect to the development and operation area after that date shall be treated as conducted with respect to the same separate petroleum operation; and

(b) from the date of approval, petroleum operations conducted pursuant to the petroleum right that are not in respect of the development and operation area shall be treated as a new separate petroleum operation.

(3) Where–

(a) there is approval of a development and operation plan within a petroleum licence area (whether or not there are prior plans approved within the licence area); and

(b) subsequently (but before any further approval of a development and operation plan within the petroleum licence area) the holder of the petroleum licence relinquishes all of the licence area that is not subject to an approved development and operation plan (whether the approval referred to in paragraph (a) or an earlier approval),

the petroleum operations conducted in the relinquished area referred to in paragraph (b) from the date of approval shall be treated as conducted with respect to the area of the development and operation plan referred to in paragraph (a) and therefore the same separate petroleum operation as conducted in that area.

(4) The Minister responsible for finance, in consultation with the Minister responsible for the management of petroleum matters, may by statutory instrument and for the purposes of this Act –

(a) prescribe circumstances in which and the extent to which petroleum operations conducted pursuant to a pipeline permit shall be treated as conducted with respect to the same separate petroleum operation as that conducted with respect to a development and operation area serviced by the pipeline; and

(b) apportion pipeline costs between petroleum operations conducted in more than one development and operation area.

(5) In this section, "pipeline permit" means a permit granted under section 76 of the Petroleum (Exploration and Production) Act, 2011.

(6) The Minister responsible for finance, in consultation with the Minister responsible for the management of petroleum matters, may by statutory instrument make further provision for the determination of separate petroleum operations including adjacent petroleum rights and merging of petroleum rights.

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Income From petroleum operations.

24. (1) Subject to subsections (1) and (3), in calculating a person's income from a separate petroleum operation for a year of assessment the following shall be included -

(a) the greater of the market value and the actual sale price of petroleum obtained from the licence area that is disposed of or treated as disposed of during the year;

(b) compensation received, whether under a policy of insurance or otherwise, in respect of loss or destruction of petroleum from the licence area;

(c) amounts received for the sale of information pertaining to the operations or petroleum reserves;

(d) amounts required to be included under section 28 for a surplus in a decommissioning fund;

(e) amounts required to be included under paragraph 5 of the Second Schedule including the disposal of an interest in a petroleum right; and

(f) any other amounts derived by the person during the year from or incidental to the operation that are included in calculating income under the Income Tax Act, 2000.

(2) The market value of petroleum shall be determined in accordance with paragraph 2 of the Second Schedule.

(3) Petroleum obtained from a separate petroleum operation that is used to pay royalties in kind as referred to in subsection (4) of section 21 shall not be included in calculating the income of the separate petroleum operation.

Deductions forPetroleum Operations

25. Subject to this section , in calculating a person's chargeable income from a separate petroleum operation for a year of assessment the following shall be included-

(a) royalties, area fees and rent paid by the person under this Act or the Petroleum (Exploration and Production) Act, 2011 for the petroleum right, but not exceeding any liability under the relevant extractive industry agreement;

(b) expenditure (other than financial costs) for the petroleum operation on the following, but only if it has been expensed in the person's financial accounts and that expensing is in accordance with generally accepted accounting principles:

(i) expenditure on reconnaissance, appraisal and exploration operations; and

(ii) expenditure in developing petroleum operations and infrastructure, including as may be prescribed by regulations;

(c) capital allowances granted for petroleum operation and calculated in accordance with paragraph 5 of the Second Schedule including the disposal of an interest in a petroleum right;

(d) contributions to and other expenses incurred in respect of a decommissioning fund for the petroleum operation as required under the extractive industry agreement or de-commissioning plan approved by the Minister responsible for management of petroleum matters;

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(e) expenses incurred by the person in the course of reclamation, rehabilitation and closure of the petroleum operation, but only to the extent that funds in the relevant decommissioning fund are not yet available or are inadequate; and

(f) any other amounts incurred by the person during the year directly in the course of the operation that may be deducted under the Income Tax Act, 2000.

Losses from Petroleum Operations.

26. Paragraph (c) of subsection (1)of section 32 and section 32A of the Income Tax Act 2000 shall apply to allowable losses of a person from a separate petroleum operation with the following modifications–

(a) tax payable may be reduced to 15 percent of the tax that would be due if losses were not carried forward;

(b) a loss may not be carried forward after the latter of the following-

(i) the tenth year of assessment from the year of assessment in which the loss was incurred; and

(ii) the tenth year of assessment from the year of assessment in which commercial petroleum production commenced;

(c) losses shall be used in the order in which they are incurred; and

(d) losses from a separate petroleum operation may be deducted only in calculating future chargeable income from that operation and not chargeable income from any other petroleum operation or non-petroleum activities.

Indirect disposal of petroleum rights.

27. (1) Where a company that holds a petroleum right suffers 25 percent or more change in its underlying ownership or control, the company shall be treated as disposing of a proportionate interest in its petroleum right and immediately reacquiring that interest.

(2) Where subsection (1) applies, the company shall be treated as–

(a) receiving for the disposal, consideration equal to the market value of the proportion of the right treated as disposed of; and

(b) incurring in respect of the reacquisition an equal amount.

(3) A company that suffers a change of ownership or control referred to in subsection (1) shall notify the Commissioner-General when it files its next tax return under section 97 of the Income Tax Act, 2000.

(4) A company that fails to comply with subsection (3)shall be liable for a penalty equal to 30 percent of the market value of the interest in the petroleum right treated as disposed of under subsection (1).

(5) This section shall be without prejudice to direct disposals of petroleum rights and the application of section 88 of the Income Tax Act, 2000 to a company that holds a petroleum right.

Decommissioning funds.

28. (1) The holder of a decommissioning fund shall be exempted from tax for the following -

(a) the receipt of contributions to the fund that are deductible for a petroleum right holder under paragraph (d) of subsection (1) of section 25; and

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(b) amounts (including interest) accumulated in or withdrawn from the fund.

(2) Where there is a surplus in a decommissioning fund and the person conducting the relevant separate petroleum operation-

(a) completes decommissioning in accordance with the approved decommissioning plan so as to be entitled to receive the surplus; or

(b) breaches the terms of the approved decommissioning plan,

the surplus shall be included in calculating the chargeable income of the person from the separate petroleum operation for the year of assessment in which the event referred to in paragraph (a) or (b) occurs.

(3) In addition to the consequences referred to in subsection (2), the person may be liable for petroleum resource rent tax for the surplus.

Minimum tax.

29. Part V of the Income Tax Act shall not apply to petroleum operations .

PETROLEUM RESOURCE RENT TAX

Petroleum resource rent tax.

30. (1) A holder of a petroleum licence that has accumulated net receipts or a year of assessment from production activities of a separate petroleum operation shall pay petroleum resource rent tax, imposed.

(2) The amount of petroleum resource rent tax referred to in subsection (1) shall be calculated by applying the rate specified in paragraph 6 of the Second Schedule to the accumulated net receipts for the year.

(3) Subject to section 34, for the purposes of calculating petroleum resource rent tax production activities conducted with respect to the area covered by an approved development and operation area shall be treated as a petroleum operation separate from any other petroleum operation.

(4) Petroleum resource rent tax shall be imposed in addition to any other tax or charge, including income tax.

Accumulated net receipts and accumulated net expenditure.

31. (1) Accumulated net receipts of a separate petroleum operation for a year of assessment shall be to the extent to which net receipts of the operation for the year exceed accumulated net expenditure for that operation for the previous year of assessment as increased by the uplift specified in paragraph 7 of the Second Schedule.

(2) Accumulated net expenditure for a separate petroleum operation for a year of assessment shall be the extent to which net expenditure for the operation for the year plus accumulated net expenditure for that operation for the previous year of assessment (if any) as increased by the uplift specified in paragraph 7 of the Second Schedule exceed net receipts of the operation for the year .

Net receipts and net expenditure.

32. (1) Net receipts of a separate petroleum operation for a year of assessment shall be the extent to which gross receipts of the operation of the year exceed deductible expenditure of the operation for the year.

(2) Net expenditure of a separate petroleum operation for a year of assessment shall be the extent to which deductible expenditure of the operation for the year exceeds gross receipts of the operation for the year.

Gross Receipts.

33. (1) Subject to this section , gross receipts of a separate petroleum operation for a year of assessment shall be the sum of the following gross amounts without deduction–

(a) gross amounts directly included in calculating income from the petroleum operation for the year as stipulated under section 24, including service fees and amounts received from the disposal of petroleum and other trading stock;

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(b) gross positive amounts that enter into the calculation of a net amount that is included in calculating income from the petroleum operation for the year as stipulated under section 24, including consideration received on the disposal of depreciable, business or other assets;

(c) gross positive amounts that enter into the calculation of a net amount (such as a loss) that is deductible in calculating chargeable income for the year where the amount is referred to in section 25, including amounts of the type referred to in paragraph (b); and

(d) for a surplus in a decommissioning fund, any amount provided for in section 37.

(2) Gross receipts of a separate petroleum operation shall not include–

(a) interest and other financial gains, including an amount treated as interest income under the Income Tax Act, 2000; or

(b) subject to section 36, consideration received for the transfer of a petroleum right.

(3) An amount referred to in subsection (1)–

(a) shall be determined in accordance with section 95 of the Income Tax Act, 2000; and

(b) may be included in the gross receipts of a year of assessment irrespective of whether or not it is actually received during that year.

Deductible Expenditure

34. (1) Subject to this section , the deductible expenditure of a separate petroleum operation for a year of assessment shall be the sum of the following gross amounts-

(a) gross amounts for the petroleum operation that are directly deducted in calculating chargeable income for the year and where the amounts are referred to in section 25;

(b) gross expenditure included during the year in the adjusted cost base of a depreciable or business asset used in the petroleum operation;

(c) other gross expenditure that enters into the calculation of a net amount that is included in calculating income from the petroleum operation for the year;

(d) other gross expenditure that enters into the calculation of a net amount (such as a loss) that is deductible in calculating chargeable income from the petroleum operation for the year where that amount is referred to in section 25;

(e) the amount of income tax payable for the petroleum operation for the year as calculated under section 22; and

(f) for the year of commencement of production activities, any amount provided for in section 35.

(2) The deductible expenditure of a separate petroleum operation shall not include–

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(a) interest or other financial costs, including an amount treated interest under the Income Tax Act, 2000;

(b) amounts claimed as capital allowances, but not to limit a deduction under paragraph (b) of subsection (1);

(c) losses referred to in section 26 and paragraph (c) of subsection (1) of section 32 and section 32A of the Income Tax Act, 2000;

(d) subject to section 36, amounts included in the adjusted cost base of a petroleum right including bonus payments; and

(e) payments to acquire an interest in the profits, receipts or expenditures of the petroleum operation and payments made for such interests.

(3) Expenditure shall not be deductible expenditure to the extent that it exceeds the requirements of section 95 of the Income Tax Act, 2000.

Year of Commen-Cement

35. (1) In a year of assessment in which a person commences production activities under a petroleum licence and for the purposes of allowing a deduction for exploration expenditure incurred during the seven years prior to the commencement, the deduction allowed under paragraph (f) of subsection (1) of section 34 shall be equal to the amount by which relevant deductible expenditure exceeds relevant gross receipts.

(2) No amount shall be deductible under paragraph (f) of subsection (1) of section 34 unless the relevant deductible expenditure and relevant gross receipts have been audited and certified as correct by the Commissioner-General.

(3) The Minister responsible for finance may by statutory instrument make regulations prescribing the time limit within which the Commissioner-General shall conduct the audit and certification.

(4) In this section-

(a) "relevant deductible expenditure" means expenditure-

(i) incurred by a person exclusively on exploration in the relevant licence area and no more than seven years before the date of commencement referred to in subsection (1); and

(ii) of a type referred to in section 34 (other than paragraph (f) of subsection (1) of section 34) presuming that the petroleum operation in question is that conducted under the petroleum licence prior to the commencement;

(b) "relevant gross receipts" means receipts–

(i) derived by the person from exploration in the relevant licence area and no more than seven years before the date of commencement referred to in subsection (1); and

(ii) of a type referred to in section 33, presuming that the petroleum operation in question is that conducted under the petroleum licence prior to the commencement; and

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(c) "relevant licence area" means that part of a petroleum licence area that becomes the development and operation area in which the production activities referred to in subsection (1) are conducted.

Transfer of Petroleum Rights

36. (1) Where a person transfers an interest in a petroleum right during a year of assessment together with the person's interest in the separate petroleum operation conducted under that right, for the purposes of calculating any petroleum resource rent tax payable by the transferee, the transferee shall be treated as–

(a) having the same accumulated net expenditure for the petroleum operation for the year of assessment preceding the transfer as the transferor had (if any);

(b) incurring the same deductible expenditure for the petroleum operation during the year of assessment of the transfer and to the time of transfer as the transferor did (if any);

(c) deriving the same gross receipts for the petroleum operation during the year of assessment of the transfer and to the time of transfer as the transferor did (if any), and

(d) having paid the same amount of instalments under section 45 during the year of assessment of the transfer and to the time of transfer as the transferor did (if any).

(2) Where a person transfers only a part of an interest in a petroleum right, the amounts referred to in subsection (1) shall be apportioned according to the amount of the interest transferred.

(3) Where expenditure, receipts or payments are attributed to a transferee under this section, such expenditure, receipts or payments shall not be attributed to the transferor.

Decommissioning fund positive balance

37. (1) In the circumstances as provided for in section 27, the surplus in a decommissioning fund shall be included in calculating the chargeable income of a person from a separate petroleum operation.

(2) The inclusion referred to in subsection (1) shall also be included in gross receipts for the purposes of calculating petroleum resource rent tax.

Processing

38. (1) A petroleum right holder conducting processing of petroleum shall be subject to income tax for those activities.

(2) Decommissioning and decommissioning funds as set out in paragraph (d) of subsection (1) of section 24, paragraphs (d) and (e) of subsection (1) of section 25 and section 28 shall apply, with necessary adaptations, in calculating a petroleum right holder's income from a business that includes processing of petroleum, but only to the extent the expenses and funds relate to that processing.

(3) Paragraph (c) of subsection (1) of section 32 and section 32A of the Income Tax Act, 2000 shall apply to allowable losses of a person from conducting a business that includes processing of petroleum so that tax payable may be reduced to 15 percent of the tax that would be due if losses were not carried forward.

PART IV–EXTRACTIVE INDUSTRY AGREEMENTS

Obligation to take account of extractive industry agreements

39. (1) In applying and administering a law relating to revenue the Commissioner-General shall not take into account any extractive industry agreement unless the Minister responsible for Finance has–

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(a) certified a true and correct copy of that agreement; and

(b) made that copy available to the Commissioner-General (whether through a public register or otherwise).

(2) Subject to subsection (1) and section 41, in the case of an extractive industry agreement concluded before the commencement of this Act, the Commissioner-General shall apply and administer a revenue law to a party to the agreement after taking into account any modification or protection of the revenue law required by the agreement.

(3) Subject to subsection (1) and section 41, in the case of an extractive industry agreement concluded on or after the commencement of this Act, the Commissioner-General shall apply and administer a revenue law to a party to the agreement after taking into account any approved fiscal stability clause contained in the agreement.

(4) Except as provided for in subsections (2) and (3), the Commissioner-General shall apply and administer any law relating to revenue without taking account of extractive industry agreements.

Approved Fiscal Stability Clause.

40. (1) Subject to subsection (2), a fiscal stability clause in an extractive industry concluded on or after the commencement of this Act shall be an approved fiscal stability clause to the extent that it protects a mineral or petroleum right holder from–

(a) the imposition of new discriminatory taxes or Government charges that does not exist at the date the agreement is concluded;

(b) the alteration of an existing tax or Government charge in a discriminatory manner; or

(c) the alteration to the material detriment of the right holder of-

(i) royalty, income tax, resource rent tax and withholding tax rates and the rate of charges due on the importation of goods or services; or

(ii) the structural features and methodology for calculating the base upon which the charges referred to in sub-paragraph (i) are imposed, including rules and rates as to capital allowances, other cost recovery and carry forward of losses.

(2) To the extent a fiscal stability clause in an extractive industry agreement incorporates protection of the type referred to in paragraph (c) of subsection (1), then unless the clause is extended by further agreement the clause ceases to be an approved fiscal stability clause-

(a) in the case of a mining agreement, ten years after the conclusion of the agreement; and

(b) in the case of a petroleum agreement, thirteen years after the first approval of a development and operation plan within the licence area.

(3) In this section, "fiscal stability clause" means a clause in an extractive industry agreement that warrants that the fiscal regime applying to a contracting party shall continue to apply or not be altered to the detriment of the party.

No double benefits un-der Extractive Industry agreements

41. (1) The purpose of this section is to prevent a party to an extractive industry agreement from securing both a modified or protected treatment under the agreement for laws relating to revenue while at the same time claiming the benefits of amendments to the revenue law that occurs after conclusion of the agreement.

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(2) Where an extractive industry agreement modifies or protects an old revenue law under section 39, any old revenue law that is modified or protected by the agreement shall continue to apply until the earlier of-

(a) the end of the agreement or relevant clauses in the agreement;

(b) in the case of an agreement concluded before the commencement of this Act, the first alteration of the modified or protected treatment in the agreement after the commencement of this Act; and

(c) the relinquishment by the person of the person's right to modified and protected treatment.

(3) In calculating the revenue liability of the person during the application period referred to in subsection (2) the Commissioner-General may, in his discretion-

(a) continue to apply other provisions of the old revenue law referred to in subsection (2) (whether or not the law have been repealed or amended) that the Commissioner-General considers are associated with or that have an application that is consequential upon the provisions mentioned in subsection (2); and

(b) disapply any old revenue law that the Commissioner-General considers to -

(i) correspond to provisions referred to in paragraph (a); or

(ii) have no corresponding provision in the revenue law.

(4) In this section, "old revenue law"-

(a) means the revenue law as applicable at the time it is modified or protected by an extractive industry agreement (see subsection (2)); and

PART V–ADMINISTRATION

Accounts

42. (1) The holder of a mineral or petroleum right may elect to maintain accounts, be assessed and pay revenue in United States Dollars or other currency as may be prescribed.

(2) The election under subsection (1) shall–

(a) be collective and for all three purposes referred to in subsection (1);

(b) be in writing and filed with the National Revenue Authority at the time of application for the relevant licence; and

(c) apply for the duration of the licence.

Assessment of royalties.

43. (1**)** A person who is liable to pay royalties under sub-section 3 of section 21 shall file with the Commissioner-General a return of royalties and make payment at the time the royalties should be paid.

(2) A return filed under subsection (1) shall be in the manner and form prescribed specifying–

(a) the volume of minerals or petroleum liable for royalties;

(b) the market value of the minerals or petroleum calculated in accordance with paragraph 2 of the First Schedule or paragraph 2 of the Second Schedule, as the case requires;

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(c) the amount of royalties the person should pay; and

(d) any other information the Commissioner-General may prescribe.

(3) Subject to this section, Part XIII of the Income Tax Act, 2000 shall apply, with any necessary adaptations, to a return filed under subsection (1).

(4) A return filed under subsection (1) shall be treated as a self-assessment but–

(a) an assessment under section 102 of the Income Tax Act, 2000 may be levied with respect to royalties; and

(b) a self-assessment under this section or an assessment under section 102 of the Income Tax Act, 2000 may be amended under section 103 of the Income Tax Act, 2000.

Assessment of income tax.

44. The Income Tax Act, 2000 shall apply to the assessment and payment of income tax for mineral and petroleum operations .

Instalments of mineral and petroleum resource rent tax.

45. (1) At the time an extractive industry producer is liable to file an estimate of chargeable income under section 113 of the Income Tax Act 2000, the producer shall also file an estimate of the mineral resource rent tax or petroleum resource rent tax due for the same year of assessment.

(2) An estimate filed under subsection (1) shall be in the manner and form prescribed estimating–

(a) gross receipts, deductible expenditure, net receipts, net expenditure, accumulated net receipts and accumulated net expenditure for the year of assessment from the separate mineral or petroleum operation, as the case requires;

(b) accumulated net expenditure for that operation for the previous year of assessment as increased by any uplift available;

(c) where the producer estimates accumulated net receipts for the year of assessment, the amount of mineral resource rent tax or petroleum resource rent tax payable with respect to those receipts; and

(d) any other information the Commissioner-General may prescribe.

(3) An extractive industry producer shall file an estimate under subsection (1), irrespective of whether any amount of mineral resource rent tax or petroleum resource rent tax is estimated as payable.

(4) An extractive industry producer that estimates mineral resource rent tax or petroleum resource rent tax as payable for a year of assessment under subsection (3) shall pay that mineral resource rent tax or petroleum resource rent tax by quarterly instalment at the same time as income tax would be payable under section 113 of the Income Tax Act, 2000.

(5) Subject to this section, the procedure in section 113 of the Income Tax Act, 2000 shall apply to estimates and payment of instalments under this section as though mineral resource rent tax and petroleum resource rent tax were income tax.

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Assessment of mineral and petroleum resource rent tax.

46. (1) At the time an extractive industry producer files a return of income under section 97 of the Income Tax Act 2000 the producer shall file a return of mineral resource rent tax or petroleum resource rent tax due for the same year of assessment.

(2) A return filed under subsection (1) shall be in the manner and form prescribed specifying–

(a) gross receipts, deductible expenditure, net receipts, net expenditure, accumulated net receipts and accumulated net expenditure for the year of assessment from the separate mineral or petroleum operation, as the case requires;

(b) accumulated net expenditure for that operation for the previous year of assessment (if any) as increased by any uplift available;

(c) where the producer has accumulated net receipts for the year of assessment, the amount of mineral resource rent tax or petroleum resource rent tax payable with respect to those receipts; and

(d) any other information the Commissioner-General may prescribe.

(3) An extractive industry producer shall file a return under subsection (1) irrespective of whether any amount of mineral resource rent tax or petroleum resource rent tax is payable for the year of assessment.

(4) An extractive industry producer that calculates mineral resource rent tax or petroleum resource rent tax as payable for a year of assessment under subsection (2) shall pay that rent tax (less any instalments paid under section 45) at the time the return is filed.

(5) Subject to this section, Part XIII of the Income Tax Act, 2000 shall apply with any necessary adaptations to a return filed under subsection (1).

(6) A return filed under subsection (1) shall be treated as a self-assessment but–

(a) an assessment under section 102 of the Income Tax Act, 2000 may be levied with respect to mineral resource rent tax or petroleum resource rent tax; and

(b) a self-assessment under this section or an assessment under section 102 of the Income Tax Act, 2000 may be amended under section 103 of the Income Tax Act, 2000.

General Principles of administration.

47. (1) The National Revenue Authority shall be responsible for administering and giving effect to this Act.

(2) This Act shall be administered in accordance with rules and procedures contained in the following sections of the Income Tax Act, 2000-

(a) section 96 of the Income Tax Act, 2000;

(b) sections 106 to 112 of the Income Tax Act, 2000;

(c) section 115 of the Income Tax Act, 2000;

(d) Part XVI of the Income Tax Act, 2000;

(e) Part XVII of the Income Tax Act, 2000;

(f) Part XVIII of the Income Tax Act, 2000; and

(g) Part XIX of the Income Tax Act, 2000.

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(3) The rules and procedures referred to in subsection (2) shall apply with necessary adaptations and, in particular, as though amounts payable under this Act were income tax.

(4) For the purposes of section 133 of the Income Tax Act, 2000, the holder of a large-scale mining licence or petroleum licence shall maintain accounts and records for the mining or petroleum operations in accordance with generally accepted accounting principles.

Assistance of officers of Public bodies.

48. (1) For the purposes of this Act, the Commissioner-General may request officers of a public body including bodies that provide security to assist or protect officers of the National Revenue Authority in carryingout their functions under this Act.

(2) A public body that receives a request under subsection (1) shall do its best to provide assistance within the limits of its authority and resources.

(3) Without limiting the scope of subsection (1), officers of a public body shall provide the National Revenue Authority with all necessary information and assistance, including for the proper assessment, audit and collection of all amounts due under this Act.

(4) Section 165 of the Income Tax Act, 2000 shall apply to a public officer providing assistance under this section with respect to all information and documents that, solely by reason of the assistance provided, come into the public officer's possession.

Prohibition on disposal of minerals and petroleum

49. (1) This section shall apply where the holder of a mineral or petroleum right fails to pay any amount due under this Act including income tax.

(2) Subject to subsection (1), the Commissioner-General may, in consultation with the National Minerals Agency or the Petroleum Directorate, as the case requires, serve a notice on a holder of a right prohibiting the disposal of any minerals or petroleum in the holder's possession until the outstanding amount has been paid.

(3) Upon service of a notice under subsection (2), a lien on the minerals and petroleum shall arise in favour of the Commissioner-General in accordance with section 107 of the Income Tax Act, 2000.

(4) The Commissioner-General may enforce payment of the amount referred to in subsection (1), by issuing distress proceedings under section 109 of the Income Tax Act, 2000 against the minerals and petroleum referred to in subsection (2).

(5) Where a holder of a mineral or petroleum right has minerals or petroleum seized by reason of tax due or pays tax due by a joint holder of that right, the holder may recover any loss from the joint holder as a debt due.

(6) A person who, without reasonable excuse, fails to comply with a notice issued under subsection (2) shall be treated as wilfully evading tax for the purposes of section 154 of the Income Tax Act, 2000.

Financial Forecasts

50. (1) A relevant licence holder shall -

(a) on each of the occasions referred to in subsection (2) and for each year of the projected life of the licence (including any potential for extension) prepare forecasts of–

(i) amounts, sources, methods, terms and conditions of financing of operations under the licence;

(ii) exploration, development and operating costs as well as additional capital costs incurred after the commencement of commercial production;

(iii) production volumes and expected conditions of sale, particularly with respect to price;

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(iv) production or profit sharing arrangements, including expected distributions, the policy on which distributions are to be based and the order of priority between distributions and other payments (especially interest and repayment of debt);

(v) taxes and other revenues to become payable to the Government of Sierra Leone and the manner in which those amounts are calculated; and

(vi) any other information as the Minister responsible for finance may prescribe;

(b) use an appropriate template provided by the Minister responsible for finance in making the forecasts referred to in paragraph (a); and

(c) have appointed, at all times, by written notification to the Minister responsible for finance, an officer-

(i) of sufficient seniority to be able to access the information referred to in paragraph (a); and

(ii) who shall liaise with the Ministry of Finance regarding matters prescribed by this section.

(2) Forecasts under paragraph (a) of subsection (1) shall be prepared twice each year, stating the forecasts at dates and forwarded to the Minister responsible for finance by dates specified by statutory instrument.

(3) Upon receiving forecasts under subsection (2), the Minister responsible for finance may, where the Minister considers it necessary, by notice in writing, require the licence holder to provide further and better particulars as to the forecasts and the licence holder shall provide those particulars within 10 working days of receiving the notice.

(4) If a relevant licence holder becomes aware of facts that make the most recent forecasts referred to in paragraph (a) of subsection (1) inaccurate in a material particular, then the licence holder shall immediately notify the Minister responsible for finance and provide updated information.

(5) A licence holder who fails to comply with the requirements of this section shall be deemed to be impeding the administration of this Act for the purposes of section 155 of the Income Tax Act, 2000 (applied by section 47).

(6) Information received under this section may be used within the Ministry of Finance for revenue forecasting and public financial management purposes, but such information is otherwise subject to the requirements of section 165 of the Income Tax Act, 2000 with any necessary adaptations.

(7) In administering this section, the Ministry of Finance shall coordinate with the National Mineral Agency and the Petroleum Directorate.

(8) In this section, "relevant licence holder" means the holder of a–

(a) mining exploration licence, where the Minister responsible for finance has notified the holder in writing that this section applies;

(b) large-scale mining licence; or

(c) petroleum licence.

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PART VI – AMENDMENTS AND TRANSITIONAL PROVISIONS

Consequential Amendments.

51. The Mines and Minerals Acts, No. 12 of 2009 is amended as set out in the Third Schedule herein.

Transitional Mineral resource rent tax.

52. (1) For the purpose of imposing mineral resource rent tax a separate mineral operation shall not have accumulated net expenditure for a year of assessment prior to the commencement year of this Act but expenditures referred to in subsection (2) may be claimed.

(2) For the purposes of imposing mineral resource rent tax, expenditure for a separate mineral operation shall include the following -

(a) for the commencement year of this Act, 40 percent of the relevant depreciated historic cost and losses;

(b) for the first year of assessment after the commencement year of this Act-

(i) 20 percent of the relevant depreciated historic cost and losses; plus

(ii) the uplift specified in paragraph 8 of the First Schedule for one year applied to the 20 percent amount referred to in subparagraph (i);

(c) for the second year of assessment after the commencement year of this Act–

(i) 20 percent of the relevant depreciated historic cost and losses; plus

(ii) the uplift specified in paragraph 8 of the First Schedule for two years applied to the 20 percent amount referred to in subparagraph (i); and

(d) for the third year of assessment after the commencement year of this Act–

(i) 20 percent of the relevant depreciated historic cost and losses; plus

(ii) the uplift specified in paragraph 8 of the First Schedule for three years applied to the 20 percent amount referred to in subparagraph (i).

(3) For the purpose of imposing mineral resource rent tax, relevant deductible expenditure and relevant gross receipts referred to in section 17 may include amounts incurred or derived prior to the commencement of this Act.

(4) The amounts referred to in subsection (3) shall meet the seven year limitation referred to in section 17.

(5) In this section–

(a) "historic cost" of an amount incurred by a person means the amount calculated in accordance with generally accepted accounting principles and specified in the person's audited financial accounts;;

(b) "relevant depreciated historic cost and losses" for a separate mineral operation means-

(i) the historic cost of all amounts for which capital allowances are available in the commencement year of this Act with respect to the operation; minus

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(ii) capital allowances at the rates provided for in paragraph 6 of the First Schedule since the amount was incurred (irrespective of whether those allowances were actually granted or claimed); plus

(iii) losses carried forward under the Income Tax Act and available for deduction in calculating chargeable income from the separate mineral operation for the commencement year of this Act; and

(c) "commencement year of this Act" for a particular person means the person's first year of assessment that ends after the commencement of this Act.

Transitional Mineral resource rent tax

53. (1) For the purpose of imposing petroleum rent tax, relevant deductible expenditure and relevant gross receipts referred to in section 35 may include amounts incurred or derived prior to the commencement of this Act.

(2) The amounts referred to in subsection (1) shall meet the seven year limitation referred to in section 35.

PART VII –MISCELLANEOUS

Regulations

54. The Minister responsible for finance may by statutory instrument make regulations for giving effect to the provisions of this Act.

FIRST SCHEDULE - MINES AND MINERALS
Part I: Royalties
(Section 3)

Royalty Rates

1. (1) Subject to subparagraph (2), the following shall be the royalty rates for minerals-

(a) 3% for minerals obtained pursuant to an artisanal mining licence; and

(b) in the case of minerals obtained pursuant to a mineral right other than an artisanal mining licence-

(i) 6.5% for precious stones other than special stones;

(ii) 8% for special stones;

(iii) 5% for precious metals; and

(iv) 3% for other cases, including bulk minerals.

(2) Samples of minerals obtained for purposes of assay, analysis or other examination or testing shall be exempt from royalties, but royalties shall apply if a sample is sold.

Market Value of Minerals

2. (1) The market value of minerals shall be the sale value receivable in a transaction meeting the requirements of section 95 of the Income Tax Act, 2000 (arm's length standard) at the time of export, processing or delivery under a contract of sale, whichever is earlier, without discount, commission or deduction:

Provided that in the case of precious stones, special stones and bulk minerals the market value shall be determined in accordance with the methods prescribed in the remainder of this paragraph.

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(2) The market value for a precious stone shall be-

(a) based on the current market prices for wholesale rough precious stones of that nature; and

(b) determined as the highest of the values ascribed to the precious stone on evaluation by-

(i) the mineral right holder;

(ii) the Government evaluators; and

(iii) an independent evaluator.

(3) The National Minerals Agency shall, for the purpose of determining the market value of precious metals and in consultation with the Ministry of Mines and Mineral Resources, at the end of each week calculate the average price of precious metals exported or sold in Sierra Leone during a week based on spot prices realised at the end of each trading day:

Provided that in the case of gold, the weekly average of the London PM Fix price in United States Dollars per fine troy ounce shall be used.

(4) Subject to subparagraph (5), the market value of bulk minerals shall be the realised gross price for a sale free-on-board (fob) at the point of export from Sierra Leone or point of delivery within Sierra Leone, as the case requires, provided it meets the requirements of subparagraph (1).

(5) Where-

(a) a mineral right holder enters into a contract for the supply of minerals (other than precious stones or precious metals) obtained under the licence; and

(b) the minerals are to be supplied under the contract over a period exceeding one year,

the method for determining the market value of the minerals supplied in a manner that is consistent with subparagraph (1) may be agreed with the Commissioner General, in consultation with the Minister responsible for finance and the National Minerals Agency, by way of an advance pricing agreement issued as a private ruling under section 168 of the Income Tax Act, 2000.

Time for Payment of Royalties

3. The holder of a mineral right shall pay royalties at the following times:

(a) in the case of precious stones and special stones, at the time of evaluation referred to in paragraph 2(2), export or delivery under a contract of sale, whichever is earlier; and

(b) in the case of other minerals, the last day of the calendar month following export, processing or delivery under a contract of sale, whichever is earlier.

INTERPRETATION

4. In this Part–

"bulk minerals" means bauxite, rutile, iron ore, tantalum and other minerals as may be prescribed by regulations, but excludes precious metals and precious stones; and

"precious metals" has the meaning given in paragraph (a) of the definition of "precious mineral" in section 1 of the Mines and Minerals Act, 2009.

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PART II: INCOME TAX

(Sections 4 and 7)

Income Tax Rate

5. The income tax rate for mineral operations shall be 30%.

Capital Allowances

6. (1) Subject to subparagraph (4), all capital allowance expenditure incurred in respect of mineral operations during a year of assessment is placed in a separate pool.

(2) Capital allowances are granted with respect to each pool at the rates provided for in subparagraph (3).

(3) Capital allowances shall be granted for expenditure pooled under subparagraph (1) for a year of assessment at the following rates:

Year of Assessment	***Amount of Capital Allowance***
In which expenditure incurred	40% of expenditure
Second Year	20% of expenditure
Third Year	20% of expenditure
Fourth Year	20% of expenditure

(4) Capital allowances shall be granted for amounts included in the adjusted cost base of a mineral right (including by reason of a reacquisition under section 9 and bonus payments) according to the following rules:

(a) each amount is allocated proportionately over the years of assessment from the year in which the amount is incurred until the year in which the term of the right expires; and

(b) the capital allowance for each year is the amount allocated to that year.

(5) Capital allowances granted with respect to a particular year of assessment shall be taken in that year and cannot be deferred to a later year of assessment.

(6) Where an asset for which capital allowances has been granted under this paragraph is disposed of (or deemed to be disposed of) during a year of assessment-

(a) if the consideration received for the disposal exceeds the written down value of the asset, the excess shall be included in calculating chargeable income from the mineral operations for the year;

(b) if the written down value of the asset exceeds the consideration received for the disposal, an additional capital allowance shall be granted for the year in an amount equal to the excess; and

(c) the relevant pools referred to in subparagraph (1) shall be reduced by the written down value of the asset.

(7) In this paragraph-

"capital allowance expenditure" means expenditure for which capital allowances are available, either under section 7 of this Act or section 39 of the Income Tax Act, 2000; and

"written down value" of an asset means the adjusted cost base of the asset less all capital allowances granted with respect to expenditure included in that cost.

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PART III: MINERAL RESOURCE RENT TAX
(Sections 12 and 13)

Mineral Resource Rent Tax Rate

7. (1) The rate of mineral resource rent tax for a year of assessment is calculated by using the following formula:

40 - Income Tax Rate

100 - Income Tax Rate

(2) For the purposes of subparagraph (1), the income tax rate shall be the rate specified in paragraph 5 for the year expressed as a whole number.

Uplift for Accumulated Net Expenditure

8. (1) The uplift referred to in section 13 shall be applied to accumulated net expenditure for a previous year of assessment in the following manner-

(a) in the case of a period of mining operations during the current year of assessment - 12.5% per annum applied to the period; and

(b) in any other case - nil.

(2) In this paragraph, a "period of mining operations" means a period during which mining operations are conducted under a mining licence, including the period between the granting of a mining licence and the commencement of mining operations if that commencement occurs within 60 days of the grant; but excludes any period during which mining operations are suspended or unreasonably delayed.

SECOND SCHEDULE - PETROLEUM

Part I: Royalties
(Section 21)

Royalty Rates

1. (1) Subject to this paragraph, the royalty rates referred to in section 21 shall be as follows-

(a) for crude oil - 10%; and

(b) for natural gas - 5%.

(2) Where the Ministers responsible for finance and for management of petroleum matters agree that the application of the rate of royalties under subparagraph (1) to petroleum obtained from particular petroleum operations make or would make those operations uneconomic, the Ministers may recommend a reduced rate of royalty, but not below 80% of the rate specified in subparagraph (1).

(3) Where Parliament ratifies a recommendation under subparagraph (2), the royalty rate referred to in section 21 with respect to the separate petroleum operation is the rate recommended.

(4) The following are exempt from the payment of royalties:

(a) samples of petroleum obtained for assay, analysis or other examination or testing, but royalties shall apply if a sample is sold; and

(b) petroleum that, with the approval of the minister responsible for management of petroleum matters, is-

(i) flared or vented in connection with petroleum operations; or

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(ii) used directly in the same separate petroleum operation from which the petroleum is obtained.

(5) In this paragraph, "crude oil" and "natural gas" have the meanings given in section 1 of the Petroleum (Exploration and Production) Act, 2011.

Market Value of Petroleum

2. (1) Subject to subparagraph (2), the market value of petroleum-

(a) shall be determined in accordance with the method prescribed in the petroleum agreement, but

(b) shall not be less than the sale value receivable in a transaction meeting the requirements of section 95 of the Income Tax Act, 2000 (arm's length standard) without discount, commission or deduction.

(2) Where-

(a) a petroleum right holder enters into a contract for the supply of natural gas obtained under the right; and

(b) the gas is to be supplied under the contract over a period exceeding one year,

the market value of the gas supplied shall be determined in a manner that is consistent with subparagraph (1)(b) and the method for determining the market value may be agreed with the Commissioner General, in consultation with the Minister responsible for the management of petroleum matters, by way of an advance pricing agreement issued as a private ruling under section 168 of the Income Tax Act, 2000.

Time for Payment of Royalties

3. Royalties with respect to petroleum obtained during a calendar month are payable on or before the last day of the following calendar month.

Part II: Income Tax
(Sections 22 and 25)

Income Tax Rate

4. The income tax rate for petroleum operations shall be 30%.

Capital Allowances

5. (1) Subject to subparagraph (4), all capital allowance expenditure incurred in respect of petroleum operations during a year of assessment is placed in a separate pool.

(2) Capital allowances are granted with respect to each pool at the rates provided for in subparagraph (3).

(3) Capital allowances shall be granted for expenditure pooled under subparagraph (1) for a year of assessment at the following rates:

Year of Assessment	**Amount of Capital Allowance**
In which expenditure incurred	40% of expenditure
Second Year	20% of expenditure
Third Year	20% of expenditure
Fourth Year	20% of expenditure

(4) Capital allowances shall be granted for amounts included in the adjusted cost base of a petroleum right (including by reason of a reacquisition under section 27 and bonus payments) according to the following rules:

(a) each amount is allocated proportionately over the years of assessment from the year in which the amount is incurred until the year in which the term of the right expires; and

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(b) the capital allowance for each year is the amount allocated to that year.

(5) Capital allowances granted with respect to a particular year of assessment shall be taken in that year and cannot be deferred to a later year of assessment.

(6) Where an asset for which capital allowances has been granted under this paragraph is disposed of (or deemed to be disposed of) during a year of assessment-

(a) if the consideration received for the disposal exceeds the written down value of the asset, the excess shall be included in calculating chargeable income from the petroleum operations for the year;

(b) if the written down value of the asset exceeds the consideration received for the disposal, an additional capital allowance shall be granted for the year in an amount equal to the excess; and

(c) the relevant pools referred to in subparagraph (1) shall be reduced by the written down value of the asset.

(7) Where more than one separate petroleum operation is conducted with respect to the same petroleum right, allowances granted with respect to the right and inclusions in income with respect to the disposal of the right shall be apportioned between the separate petroleum operations.

(8) The apportionment mentioned in subparagraph (7) shall be as prescribed by regulations (with consultation of the PD) and in the absence of regulations on the basis of the market value of the part of the petroleum right used in each separate petroleum operation at the time the allowance is granted or the inclusion in income, as the case requires.

(9) In this paragraph-

"capital allowance expenditure" means expenditure for which capital allowances are available, either under section 25 of this Act or section 39 of the Income Tax Act, 2000; and

"written down value" of an asset means the adjusted cost base of the asset less all capital allowances granted with respect to expenditure included in that cost.

Part III: Petroleum Resource Rent Tax

(Sections 29 and 30)

Petroleum Resource Rent Tax Rate

6. (1) The rate of petroleum resource rent tax for a year of assessment shall be calculated by using the following formula: Royalties, taxes and other charges

58 - Income Tax Rate

100 - Income Tax Rate

(2) For the purposes of subparagraph (1), the income tax rate shall be the rate specified in paragraph 4 for the year expressed as a whole number.

Uplift for Accumulated Net Expenditure

7. (1) The uplift referred to in section 31 shall be applied to accumulated net expenditure for a previous year of assessment in the following manner-

(a) in the case of a period of production activities during the current year of assessment - 15% per annum applied to the period; and

(b) in any other case - nil.

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(2) In this paragraph, "period of production activities" means a period during which production activities are conducted under a petroleum licence, including the period between the approval of the development and operation plan and the commencement of production activities if that commencement occurs within 60 days of the approval, but excludes any period during which production activities are suspended or unreasonably delayed.

THIRD SCHEDULE - CONSEQUENTIAL AMENDMENTS
(Section 50)

The Mines and Minerals Act, 2009 (Act No. 12 of 2009)

Mining and petroleum operations

1. The Mines and Minerals Act, 2009 is amended

(a) by repealing and replacing of section 148 with the following new section-

"148. A holder of a mineral right shall be subject to the following-

(a) royalties and mineral resource rent tax as imposed by the Extractive Industries Revenue Act, 2018;

(b) income tax as imposed by the Income Tax Act, 2000 and modified by the Extractive Industries Revenue Act, 2018;

(c) annual charges and other amounts payable under this Act; and

(d) without limitation or modification, all other applicable taxes, fees and charges, including those listed in the First Schedule of the National Revenue Authority Act, 2002."

(b) by deleting sections 149, 150 and 151;

(c) in subsection (1) of section 157 by replacing the words "Royalties, import duty and any annual charge" with the word "Amounts";

(d) by deleting subsection (3) of section 157.

The Income Tax Act 2000 (Act No. of 8 2000)

2. The Income Tax Act, 2000 is amended by-

(a) repealing and replacing section 21 with the following new section-

21. The manner in which this law applies to mining and petroleum operations shall be modified by the Extractive Industries Revenue Act, 2018."

(b) deleting paragraph (n) of subsection (2) of section 32;

(c) deleting section 42;

(d) deleting the sixth schedule.

The National Revenue Authority Act, 2002 (Act No. 11 of 2002)

(3) The National Revenue Authority Act, 2002 is amended as follows-

(a) in subsection (1) of section 24 by repealing and replacing paragraphs (a) and (b) respectively with the following new paragraphs-

(a) 3 per cent of the actual revenue collected annually other than royalties, income tax, resource rent tax (mineral and petroleum) and bonus payments referred to in the Extractive Industries Revenue Act, 2018;

(b) a percentage to be specified from time to time by the Minister with the approval of Parliament, of the revenue referred to in paragraph (a) for each year in excess of the estimate of that revenue in the estimates of Sierra Leone for the relevant year";

(b) by inserting the following new paragraph immediately after paragraph (f)-

"(g) a dedicated budget allocation for administration of the Extractive Industries Revenue Act, 2018";

(c) in the Schedule, by inserting the following new item immediately after item 10-

"11. Extractive Industries Revenue Act, 2018"

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