

PETROLEUM (INCOME TAX) (INVESTMENT ALLOWANCE) REGULATIONS 2013

PU (A) 120
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IN exercise of the powers conferred by subsection 22A(1) of the Petroleum (Income Tax) Act 1967 [Act 543], the Director General makes the following regulations:

CITATION AND COMMENCEMENT

- 1(1) These regulations may be cited as the **Petroleum (Income Tax) (Investment Allowance) Regulations 2013**.
- 1(2) These Regulations are deemed to have come into operation on 30 November 2010.

APPLICATION

- 2 These Regulations shall apply to all chargeable persons carrying on petroleum operations in respect of a qualifying project.

INTERPRETATION

- 3 For the purpose of these Regulations:

“high pressure high temperature” means a project for the development of a reservoir in an undisturbed bottom hole temperature conditions of greater than 150 °C or 300 °F and where either the maximum anticipated pore pressure of any porous formation exceeds 0.8 psi/ft. (more than 15.4ppg mud), or pressure control equipment with a rated working pressure in excess of 10,000 psi;

“high carbon dioxide gas” means a project with carbon dioxide gas content of more than twenty per cent or not meeting gas plant specifications post blending and require carbon dioxide removal;

“field” means an area within a petroleum agreement area;

“marginal field” means a field within a petroleum agreement area as provided for under regulations 4;

“Field Development Plan” means a plan for the development of oil or gas field approved by Petroliam Nasional Berhad;

“enhanced oil recovery” means a tertiary development project which involves processes where external energy is applied to the reservoir to improve the recovery factor from producing fields;

“deepwater project” means a project in water depth of more than two hundred meters;

“qualifying project” means a project as provided for under regulation 5.

MARGINAL FIELD

- 4 The Minister may determine a marginal field which is a field in a petroleum agreement area which has potential crude oil reserves not exceeding thirty million stock tank barrels or natural gas reserves not exceeding five hundred billion standard cubic feet.

QUALIFYING PROJECT

- 5 The Minister may determine a qualifying project which is a project undertaken by a chargeable person:
- (a) in a field which carries out one or more projects in respect of enhanced oil recovery, high carbon dioxide gas, high pressure high temperature or any combination thereof;
 - (b) in an area under a petroleum agreement, in respect of a deepwater project.

SEPARATE PETROLEUM OPERATIONS

- 6 For the purpose of the Act and these Regulations, petroleum operations carried on by a chargeable person in respect of a qualifying project shall be treated as separate and distinct petroleum operations of that chargeable person from his other petroleum operations in marginal fields, deepwater projects and projects which are not qualifying projects.

GROSS INCOME

- 7(1) In ascertaining the gross income of a chargeable person from his petroleum operations carried on in respect of a qualifying project specified under regulation paragraph 5(a), income from that qualifying project shall be treated separately from his gross income in respect of projects which are not qualifying projects.
- 7(2) Where a chargeable person carries on his petroleum operations in an area in respect of a qualifying project specified under regulation paragraph 5(b), the gross income from that area shall be treated as one gross income.

ADJUSTED INCOME

- 8 The adjusted income of a chargeable person for the basis period for a year of assessment from his petroleum operations in respect of a qualifying project shall be the amount ascertained in accordance with Part III of Chapter 3 of the Act.

ADJUSTED LOSS

- 9(1) Where but for an insufficiency of gross income of a chargeable person for the basis period for a year of assessment from his petroleum operations in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be, there would have been an amount of adjusted income of that chargeable person for that period, the amount by which the total of all such deductions as would then have been allowed under Part III of Chapter 3 of the Act in ascertaining that adjusted income exceeds his gross income for that period from his petroleum operations in respect of a qualifying project shall be taken to be the amount of his adjusted loss for that period from that petroleum operations.
- 9(2) The adjusted loss ascertained under subregulation (1) shall only be allowed as a deduction against the statutory income of the chargeable person from his petroleum operations in respect of that qualifying project specified under paragraph 5(a) or (b), as the case may be.

CAPITAL ALLOWANCE

- 10(1)** Where a chargeable person has for the purpose of carrying on his petroleum operations in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be, incurred qualifying capital expenditure in relation to an asset, there shall be made to him allowances to that petroleum operations under the Second Schedule of the Act.
- 10(2)** Where a chargeable person incurs qualifying capital expenditure on an asset used for petroleum operations in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be, and that asset is also used for projects which are not qualifying projects, then the allowances which fall to be made under Second Schedule of the Act on that asset shall be apportioned based on the gross income of each project.
- 10(3)** Where, by reason of the absence or insufficiency of the adjusted income of a chargeable person from his petroleum operations in respect of a qualifying project specified under paragraph 5(a) or (b), as the case maybe, for the basis period for a year of assessment, effect cannot be given or cannot be given in full to the allowance to which the chargeable person is entitled under subregulation (1) for that year of assessment, then so much of that allowance which cannot be made shall be made in the first subsequent year for the basis period for which there is adjusted income from petroleum operations in respect of that qualifying project, and for subsequent years of assessment until the whole of the allowance to which he is so entitled is made.
- 10(4)** Paragraph 49 of the Second Schedule of the Act shall apply to the disposal of qualifying capital expenditure in relation to an asset referred to under subregulation (1) which is owned by that chargeable person for a period of less than two years.
- 10(5)** For the purpose of this regulation:
- (a) "asset" means an asset in relation to which qualifying capital expenditure has been incurred;
 - (b) "incurred" has the same meaning assigned to it in paragraphs 27 and 35 of the Second Schedule of the Act.

STATUTORY INCOME

- 11** The statutory income of a chargeable person for a year of assessment from his petroleum operations in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be, shall consist of the amount of his adjusted income from that petroleum operations for the basis period for that year and reduced by the amount of any allowance or the aggregate amount of the allowances falling to be made for that year under regulation 10 from his petroleum operations in respect of qualifying project.

INVESTMENT ALLOWANCE

- 12(1)** Subject to this regulation, where in the basis period for a year of assessment a chargeable person has incurred qualifying capital expenditure:
- (a) in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be; or
 - (b) on an infrastructure asset as determined by the Minister,
- for the purpose of carrying on petroleum operations, there shall be given to that chargeable person for that year of assessment an investment allowance equal to sixty per cent of that expenditure incurred in the basis period for a year of assessment within a period of ten years (hereinafter referred to as "qualifying period").

- 12(2)** The commencement of the qualifying period of each qualifying project shall be on the date of the approval of the Field Development Plan in respect of that qualifying project.
- 12(3)** Where a chargeable person incurs qualifying capital expenditure within the qualifying period in respect of a qualifying project specified under paragraph 5(a) or (b), as the case maybe, that expenditure shall be deemed to be incurred on the day of first sale or disposal of chargeable petroleum in the basis period for a year of assessment by that chargeable person.
- 12(4)** Where an allowance is given to a chargeable person under subregulation (1) for a year of assessment, so much of the statutory income of the petroleum operations of the chargeable person in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be, for that year of assessment as is equal to the amount of the allowance shall be exempt from tax and the amount so exempt shall not exceed seventy per cent of the statutory income of that qualifying project of the chargeable person for that year of assessment and for the next year of assessment, and so on.
- 12(5)** Where, by reason of an absence or insufficiency of statutory income of a chargeable person from his petroleum operations in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be, for the basis period for a year of assessment, effect cannot be given full to any allowance to which the chargeable person is entitled to under this regulation for that year of assessment in respect of that qualifying project, notwithstanding the foregoing paragraphs, so much of the allowance as cannot be given for that year of assessment shall be deemed to be an allowance to be given to the chargeable person under this regulation for the first subsequent year of assessment for the basis period for which there is statutory income from that qualifying project, and so on for subsequent years of assessment until the chargeable person has received the whole of the allowance to which it is so entitled in respect of that qualifying project.
- 12(6)** In this regulation:
- (a) qualifying capital expenditure in respect of a “qualifying project specified under paragraph 5(a) or (b)” means capital expenditure incurred by a chargeable person on the provision of plant and machinery including the provision or construction of fixed off-shore platforms for drilling or production, for extraction of petroleum in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be; and
 - (b) qualifying capital expenditure on “infrastructure asset” means the qualifying capital expenditure incurred by a chargeable person on an asset in respect of pipeline and associated facilities, directly used for the purposes of handling and transporting petroleum by the chargeable person to any point of sale or delivery or export.

ASSESSABLE INCOME

- 13(1)** The assessable income of a chargeable person from petroleum operations in respect of a qualifying project for a year of assessment (in this regulation referred to as “the relevant year”) shall consist of the amount of his statutory income in respect of a qualifying project specified under paragraph 5(a) or (b), as the case may be, for the relevant year from that petroleum operations reduced by:
- (a) the amount of any adjusted loss for the basis period from the year of assessment preceding the relevant year of assessment; then
 - (b) the amount of any investment allowance or the aggregate amount of investment allowance;
- which has not been deducted from his statutory income under regulations 9 and 12 of these Regulations.

- 13(2)** A deduction of any adjusted loss under subregulation (1) shall be made as far as possible from the statutory income of the chargeable person from his petroleum operations in respect of a qualifying project for the first year of assessment after that for the basis period for which that loss is the adjusted loss, and, so far as it cannot be so made, then from the statutory income from that petroleum operations for the next year of assessment, and so on.
- 13(3)** The assessable income ascertained under subregulation (1) shall be treated as part of the chargeable income of a chargeable person for a year of assessment for the purpose of section 22 of the Act.
- 13(4)** For the purpose of these Regulations, thirty per cent of the amount of income under subregulation 12(4) shall be deemed to be the assessable income or part of the assessable income, as the case may be, of the chargeable person for the relevant year of assessment.

DISPOSAL

- 14(1)** Where an asset which qualifies for the allowances referred to in regulation 12 is disposed of within two years from the date of its acquisition, the allowances which have been allowed to the chargeable person under these Regulations shall be treated as gross income of that chargeable person in the basis period for a year of assessment in which the asset is disposed of.
- 14(2)** For the purpose of subregulation (1), “disposed of” has the meaning assigned to it in paragraph 40 of the Second Schedule to the Act.

NON-APPLICATION

- 15** These Regulations shall not apply to a chargeable person for the basis period for a year of assessment where that chargeable person:
- (a) has been granted exemption under the Petroleum (Income tax) (Exemption) Order 2013 [*P.U. (A) 122/2013*];
 - (b) has been granted an investment allowance under the Petroleum (Income Tax) (Accelerated Capital Allowance) (Marginal Field) Rules 2013 [*P.U. (A) 119/2013*];
 - (c) carries on petroleum operations in the Joint Development Area; or
 - (d) carries on petroleum operations in an area under any agreement or arrangement made by the Government with the government of any territory outside Malaysia for the joint exploration and exploitation of petroleum in overlapping areas.