

PETROLEUM PROFITS TAX (AMENDMENT) (No. 2)

DECREE 1979



Decree No. 24

[1st April 1977]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1. The Petroleum Profits Tax Act 1959 is hereby amended as follows :—

(a) for paragraph (e) of section 10 (1) there shall be substituted the following, that is—

Sundry
amendments
to Petroleum
Profits Tax
Act 1959.
1959 No. 15.

“(e) (i) any expenditure including intangible drilling costs directly incurred in connection with drilling an appraisal or development well but excluding any expenditure directly incurred on the first two appraisal wells referred to in sub-paragraph (ii) of this paragraph, and excluding expenditure which is qualifying plant or building expenditure for the purpose of the Second Schedule, and excluding any sums deductible in ascertaining the tax under the provisions of section 17 and any expense or deduction in respect of a liability incurred which is deductible under any other provision of this section ;

(ii) any expenditure (tangible or intangible) directly incurred in connection with the drilling of an exploration well and the next two appraisal wells in the same field whether the wells are productive or not ;

(iii) where a deduction may be given under this section in respect of any such expenditure that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Second Schedule.” ;

(b) in section 16, by renumbering the existing section as subsection (1) and by the addition of a new subsection (2), that is—

“(2) where a company has not qualified for treatment under paragraph 6 (4) of the Second Schedule, that is to say, where a company has not yet commenced to make a sale or bulk disposal of chargeable oil under a programme of continuous production and sales as at 1st April 1977, its assessable tax for any accounting period during which it has not fully amortized all pre-production capitalised expenditure due to it less the amount to be retained in the book as provided for in paragraph 6 of the Second Schedule shall be 65.75 per cent of the chargeable profits for that period.” ;

(c) in section 17, immediately after paragraph (b) of subsection (2) thereof, there shall be inserted the following new paragraph, that is—

“(c) the amount of investment tax credit due for the period to the company under paragraph 5 of the Second Schedule ;”

(d) in the Second Schedule—

(i) in paragraph 4 thereof for the words “initial allowances” there shall be substituted therefor the words “investment tax credit” ;

(ii) for paragraph 5 thereof there shall be substituted the following new paragraph—

“5.—(1) For the purposes of this Act and subject to the provisions of this Schedule, where a company has incurred any qualifying capital expenditure wholly, exclusively and necessarily for the purposes of petroleum operations carried on by it, there shall be due to that company, for the accounting period in which that asset was first used for the purposes of such operations, an allowance (in this Schedule called “investment tax credit”) at the appropriate rate per cent, set forth hereunder, of such expenditure, that is—

(a) for land operations—5 per cent ;

(b) for offshore operations in areas up to and including 100 metres of water depth—10 per cent ;

(c) for offshore operations in water depth beyond 100 metres and up to 200 metres—15 per cent ; and

(d) for operation in areas beyond 200 metres—20 per cent.

(2) For the purposes of this Act, the investment tax credit shall be deducted from the cost of the asset to arrive at the amount of qualifying expenditure and before calculating the annual allowance in the manner provided for in paragraph 6 below.

(3) Notwithstanding any other provisions in this Act, investment tax credit shall be a credit against tax payable and not a charge against income.” ;

(iii) for paragraph 6 thereof there shall be substituted the following new paragraph—

“6.—(1) Subject to the provisions of this Schedule, where, in any accounting period of a company, the company owning an asset has incurred in respect thereof qualifying expenditure wholly, exclusively and necessarily for the purposes of petroleum operations carried on by it, there shall be due to that company for the accounting period in which that asset was first used for the purpose of such operation an allowance (in this Schedule called “an annual allowance”) at a rate which would enable the asset to be amortized in five equal annual instalments.

(2) Notwithstanding the provisions of sub-paragraph (1) above, there shall be retained in the books, in respect of each asset, one per cent of the initial cost of the asset which may only be written off in accordance with sub-paragraph (3) below.

(3) Any asset or part thereof in respect of which capital allowances have been granted may only be disposed of on the authority of a Certificate of Disposal issued by the Commissioner or any person authorised by him.

(4) All unrecovered capitalised expenditure prior to 1st April 1977 shall be deemed to have been capitalised with effect from 1st April 1977 and shall, as provided for in sub-paragraph (1) above, be amortized in five equal instalments and shall be subject to the provisions of sub-paragraphs (2) and (3) above.

(5) Notwithstanding any provisions in any law to the contrary all capital allowances granted shall, up to 31st March 1977, be calculated or shall be deemed to have been calculated on the basis of a declining balance.”;

(iv) in paragraph 7 thereof for the words “initial allowance” there shall be substituted therefor the words “investment tax credit”;

(v) in paragraph 10 thereof, the words “initial or” where they occur therein are hereby repealed ; and

(vi) Tables I and II of the Schedule are hereby repealed.

2. This Decree may be cited as the Petroleum Profits Tax (Amendment) (No. 2) Decree 1979 and shall be deemed to have come into operation on 1st April 1977.

Citation and
commence-
ment.

MADE at Lagos this 26th day of June 1979.

GENERAL O. OBASANJO,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

*(This note does not form part of the above Decree
but is intended to explain its purpose)*

The Decree amends the Petroleum Profits Tax Act 1959 by giving certain incentives by way of reduced taxation to companies prospecting for oil in Nigeria. The Decree takes effect retrospectively from 1st April 1977.

**PENSIONS (TRANSFER OF RESPONSIBILITY)
(UNITED KINGDOM AGREEMENT) DECREE 1979**



Decree No. 25

[1st July 1979] Commence-
ment.

WHEREAS by an Agreement dated the 26th day of March 1979 between the Federal Military Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland arrangements were made for the transfer to the Government of the United Kingdom of Great Britain and Northern Ireland of the responsibility concerning the pensions of British subjects who had retired from certain public services in the Federation :

AND WHEREAS it is necessary and expedient to make provision by law for the implementation of the said Agreement and other matters connected therewith :

NOW, THEREFORE, THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) As from the commencement of this Decree, the payment of pensions to certain British subjects who had retired or hereafter retire from any office in any public service in the Federation specified in the Agreement contained in the Schedule to this Decree shall no longer be the responsibility of the Government of the Federation or, as the case may require, the Government of a State but shall devolve upon and shall be the responsibility of the Government of the United Kingdom of Great Britain and Northern Ireland in accordance with the terms of the said Agreement.

Transfer of responsibility concerning pensions of certain expatriate officers, etc.

(2) As from the coming into force of this Decree, the provisions of any enactment or law relating to pensions shall not apply to pensions covered by the Agreement and accordingly, the provisions of any such enactment or law shall be read subject to the provisions of this Decree.

2. This Decree may be cited as the Pensions (Transfer of Responsibility) (United Kingdom Agreement) Decree 1979 and shall come into force on 1st July 1979.

Citation and commencement.

SCHEDULE

Section 1 (1)

AGREEMENT BETWEEN THE FEDERAL MILITARY
GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA
AND THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND CONCERNING
PUBLIC OFFICERS' PENSIONS

Article 1

INTERPRETATION

- (1) In this Agreement, except where the context otherwise requires :
- (a) "actuary" means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries in Scotland ;
- (b) "the appointed day" means the day mutually arranged between the Government of the United Kingdom and the Government of Nigeria ;
- (c) "the British element" in relation to a pension means :
- (i) (aa) in respect of a pension arising from death resulting from an injury on duty or a pension or additional pension arising from such an injury, being an injury received before the operative date, the whole cost ;
- (bb) in respect of a widows' and orphans' pension, the whole cost ;
- (cc) in respect of compensation payable under the Nigeria (Retirement Benefits) Order-in-Council 1960, the whole cost ;
- (dd) in respect of any other pension that proportion of the pension payable to or in respect of an officer which accrues from service before the operative date ;
- (ii) for the purposes of subparagraph (i) of this paragraph the pension benefits shall be calculated according to the pensions laws in force before 1974 and enacted prior to that date ;
- (iii) for the purposes of subparagraph (i) (dd) of this paragraph the proportion of a pension which accrues from service before the operative date is that proportion which the total pensionable emoluments enjoyed by the officer from his public service under the Government of Nigeria or of a Region prior to the operative date bears to his total pensionable emoluments enjoyed throughout his public service under such a Government taken into account in determining the amount of such pension ;
- (d) "the Nigeria element" in relation to a pension means the full cost of the pension other than the British element ;
- (e) "officer" means :
- (i) an officer so defined in :
- (aa) The Public Officers (Eastern Nigeria) Agreement 1961 between Her Majesty's Government in the United Kingdom and the Government of Eastern Nigeria signed at Enugu on 5th January, 1962; or

(bb) The Public Officers (Northern Nigeria) Agreement 1961 between Her Majesty's Government in the United Kingdom and the Government of Northern Nigeria signed at Kaduna on 18th October, 1961 ; or

(cc) The Public Officers (Western Nigeria) Agreement 1962 between Her Majesty's Government in the United Kingdom and the Government of Western Nigeria signed at Ibadan on 7th November, 1962 ;

hereinafter referred to as "the Public Officers Agreements ; or

(ii) an officer who was the substantive holder of a pensionable office in the former public service of Nigeria prior to the Federation or who before 1st October 1960, was the substantive holder of a pensionable office in the public service of the Federation of Nigeria and includes a person who was before that date the substantive holder of a pensionable office in the public service of a Region, being a person :

(aa) who was selected for or offered appointment to an office in such former public service of Nigeria or the public service of the Federation of Nigeria or the public service of a Region by a Secretary of State ; or

(bb) whose appointment to any such office was approved by a Secretary of State ; or

(cc) who had entered into an agreement with the Crown Agents for Overseas Governments and Administrations to serve in any such office ; or

(dd) who although not a person falling within subparagraphs (aa), (bb) or (cc) of this paragraph is or has been a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary ; or

(iii) an officer who served in a West African Inter-Territorial Research Organisation who would have been an officer to whom subparagraphs (i) or (ii) of this paragraph applied if his office had been a pensionable office in the public service of Eastern or Western Nigeria before 8th August 1957, or in the public service of Northern Nigeria before 15th March 1959 or in the public service of the Federation of Nigeria before 1st October 1960 ; and who was not a citizen of Nigeria on 1st April 1971 or having retired from the public service or having died in public service after that date, is not or was not a citizen of Nigeria at the time of his retirement or death as the case may be ;

(f) "the operative date" means :

(i) in respect of public service under the Government of Eastern Nigeria or the Government of Western Nigeria, 1st April 1958 ;

(ii) in respect of public service under the Government of Northern Nigeria, 15th March 1959 ;

(iii) in respect of public service under the Government of the Federation of Nigeria, 1st October 1960 ;

(g) "other public service" means public service not under the Government of Nigeria or of a Region ;

(h) "pension" means pension, gratuity, compensation or any retiring allowance or other like benefit, or any increase of pension, or any contributions repayable to, or interest on contributions payable to any officer, payable under the pensions laws by the Government of Nigeria or a Region or by the Government of the United Kingdom to or in respect of any officer, or to the widow or child of any officer or to his legal personal representative ;

(i) "pensionable emoluments" means :

(i) in respect of public service under the Government of Nigeria or a Region, emoluments which count for pension under the pensions laws ;

(ii) in respect of other public service, emoluments which count for pension in accordance with the law or regulations in force in such service ;

(j) "pensions laws" means :

(i) in relation to pensions other than widows' and orphans' pensions, any law, regulation or administrative direction providing for the payment of pensions to officers in respect of public service and in force in Nigeria at any time prior to the appointed day and enacted prior to that date, including the Nigeria (Retirement Benefits) Order in Council 1960 ;

(ii) in relation to widows' and orphans' pensions' the Widows' and Orphans' Pensions Ordinance, Chapter 220 of the Laws of the Federation of Nigeria and Lagos and any amendments thereto in force at any time prior to the appointed day and enacted prior to that date (thereinafter referred to as "Chapter 220") ; and

(iii) in relation to both widows' and orphans' and other pensions, includes the Special List Agreements ;

(k) "public service" means :

(i) service in a civil capacity under the Government of Nigeria or of a Region or any other country or territory in the Commonwealth ;

(ii) service under the East Africa High Commission, the East African Common Services Organisation, the East African Posts and Telecommunications Administration, the East African Railways and Harbours Administration, the East African Community, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation or the East African Railways Corporation ;

(iii) service which is pensionable ;

(aa) under the Overseas Superannuation Scheme ; or

(bb) under any Act relating to the superannuation of teachers in the United Kingdom ; or

(cc) under a local authority in the United Kingdom ; or

(dd) under the National Health Service of the United Kingdom ; or

(ee) under the Post Office, United Kingdom, of Great Britain and Northern Ireland ;

(iv) any other service accepted by the Government of the United Kingdom and the Government of Nigeria to be public service for the purposes of this Agreement ;

(v) except for the purposes of computation of a pension, gratuity or other allowance and of determination of the maximum pension grantable, service as a Governor in respect of which a pension may be granted under the Overseas Pensions Act 1973, or any Act amending or replacing that Act ;

(vi) service as the holder of the office of President, Vice-President, Justice of Appeal, Registrar, Officer or servant of the Court of Appeal for Eastern Africa established by the Eastern Africa Court of Appeal Order in Council, 1961 (United Kingdom S.I. 1961 No. 2323) or the Court of Appeal for East Africa ;

(vii) service in the service of the Interim Commissioner for the West Indies ;

(1) "Special List Agreements" means :

(i) the Special List A Agreements made in 1957 between the Government of the United Kingdom and respectively the Government of the Federation of Nigeria, the Government of the Eastern Region of Nigeria, the Government of the Northern Region of Nigeria and the Government of the Western Region of Nigeria ; or

(ii) the Special List B Agreements made in 1960 between the Government of the United Kingdom and respectively the Government of the Federation of Nigeria, the Government of Eastern Nigeria, the Government of Northern Nigeria and the Government of Western Nigeria ; or

(iii) the Special Lists A and B Agreements which were accepted by the Government of Mid-Western Nigeria ;

(m) "widows' and orphans' pensions" means pensions payable under Chapter 220.

(2) References to the Federal Military Government of the Federal Republic of Nigeria, the Government of the Federation of Nigeria or the Government of a Region shall be construed as including references to any predecessor Government or successor Government as appropriate, and references to public service under any such Government shall be construed as including public service on secondment to such Government under a Special List Agreement.

Article 2

ASSUMPTION OF RESPONSIBILITY BY THE GOVERNMENT OF THE UNITED KINGDOM

As from the appointed day the Government of the United Kingdom shall assume from the Government of Nigeria and from the Governments of the Regions, or, in the case of pensions payable under the Special List Agreements, maintain the responsibility for the control, administration and payment of pensions which have been awarded before the appointed day and for the award, control, administration and payment of pensions which would fall to be awarded on or after the appointed day.

Article 3

OBLIGATIONS OF THE GOVERNMENT OF THE UNITED KINGDOM

The Government of the United Kingdom undertake :

(a) that they shall award, control, administer and pay the pensions referred to in Article 2 of this Agreement to or in respect of the persons concerned in accordance with the principles and rules contained in the pensions laws, with such modification as may be necessary in consequence of the transfer of responsibility under this Agreement, or in accordance with such other principles and rules as the Government of the United Kingdom consistently with the next following paragraph may from time to time determine ;

(b) that apart from any modifications arising from the pensions being payable out of public moneys of the United Kingdom they shall not apply to or in respect of any officer different provisions from those contained in the pensions laws (other than any provisions, express or implied, relating to the currency and method of payment of a pension) so as to make such provisions less favourable to any beneficiary or potential beneficiary than the provisions applicable to him on the appointed day : Provided that if a beneficiary or potential beneficiary elects to have any provision applied to him, that provision shall be taken to be more favourable to him ;

(c) that if the Government of Nigeria or of a Region should be adjudged by the order of a competent court of law having jurisdiction in Nigeria to be liable to pay to or in respect of an officer or the widow or child or legal personal representative of an officer any sum in respect of a pension for which the Government of the United Kingdom have assumed responsibility under this Agreement, the Government of the United Kingdom shall repay to the Government of Nigeria any sum paid to such person for the purpose of complying with the order of the court ; but in this event the Government of the United Kingdom shall be free to reduce by corresponding sums, or totally to withhold, any payments of the same pension to or in respect of that person which would otherwise fall to be made by them under this Agreement.

Article 4

OBLIGATIONS OF THE GOVERNMENT OF NIGERIA

(1) The Government of Nigeria undertake :

(a) that they shall remain responsible for any instalments of pension granted to or in respect of an officer, other than a pension payable under a Special List Agreement which remain unpaid on the appointed day ;

(b) that they shall as from the appointed day relinquish responsibility for the award, control, administration and payment of any pension to or in respect of an officer otherwise than in accordance with the terms of this Agreement ;

(c) that they shall pay to the Government of the United Kingdom in accordance with such arrangements as may be accepted by the two Governments :

(i) in respect of any pension awarded before the appointed day to or in respect of an officer, a sum representing the cost, if any, of the Nigeria element of such pension ;

(ii) in respect of any pension (other than a widows' and orphans' pension) awarded on or after the appointed day to or in respect of an officer :

(aa) that part of the sum which would represent the Nigeria element of such pension if the public service of the officer ceased on the appointed day, which is attributable to the officer's public service under the Government of Nigeria or of a Region up to the day immediately preceding the appointed day ; and

(bb) a sum representing 40 per cent of the pensionable emoluments earned by an officer during any part of his public service under the Government of Nigeria or of a Region which occurs on or after the appointed day ;

(iii) in respect of a widows' and orphans' pension awarded on or after the appointed day, a sum representing the cost, if any, of the Nigeria element of such pension ;

(2) The sums payable under sub-paragraphs (1)(c)(i), (1)(c)(ii)(aa) and (1)(c)(ii)(bb) of this Article shall be actuarially determined by an Actuary nominated by the Government of the United Kingdom and acceptable to the Government of Nigeria and the sums payable under sub-paragraphs (1)(c)(i) and (1)(c)(ii)(aa) shall be reduced by a sum accepted by the two Governments as representing the tax which the Government of Nigeria or of a Region would have received in respect of the Nigeria element of the pensions.

Article 5

SUPPLY OF INFORMATION

Each of the Parties to this Agreement shall, whenever requested to do so by other Party, supply to that Party such information in connection with the operation of the arrangements contained in this Agreement as may be specified in such request.

Article 6

MODIFICATION OF PREVIOUS AGREEMENTS

(1) On and after the appointed day the provisions of any arrangement relating to the reimbursement of the Government of Nigeria by the Government of the United Kingdom of a proportion of the cost of a pension shall cease to apply to any pension payable to or in respect of an officer to whom this Agreement applies in respect of any pension beginning on the appointed day.

(2) On and after the appointed day the provisions of Articles 3, 4, 5 and 6 and the words "and shall take any action that may be necessary to Preserve his pension rights when he is so transferred or promoted" in Article 7(2) of the Public Officers Agreements shall cease to apply to or in respect of officers to whom this Agreement applies.

(3) On and after the appointed day the words "and recovered" in subparagraph 1 *b* (i) to the end of that subparagraph, and paragraphs 2 (e) (i), 2 (e) (iii), 2 (i) and 3 (j) of the Special List A Agreements shall cease to apply to or in respect of officers to whom this Agreement applies.

(4) On and after the appointed day the words "and, subject to the other provisions of this Memorandum, will be recovered from the Nigerian Government concerned" in paragraph 3, and paragraph 6 of the Special List B Agreements shall cease to apply to or in respect of officers to whom this Agreement applies.

Article 7

MODIFICATION OF THIS AGREEMENT

If the Government of the United Kingdom and the Government of Nigeria mutually decide that this Agreement should be modified in any particular case or class of cases, the foregoing provisions of this Agreement shall be applied to such case or cases with such modifications, additions or exceptions as may be necessary to give effect to such mutual decision.

Article 8

ENTRY INTO FORCE

Each of the Parties to this Agreement shall notify the other Party in writing as soon as it has completed the domestic legislation and other arrangements necessary to enable it to carry out this Agreement, and this Agreement shall enter into force on the date on the later of these two notifications.

Article 9

CITATION

This Agreement may be cited as the Public Officers' Pensions (Nigeria) Agreement 1979.

MADE at Lagos this 26th day of June 1979.

GENERAL O. OBASANJO,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purpose)

The Decree implements the Agreement concluded between the Federal Military Government and the Government of the United Kingdom transferring from Governments in Nigeria to the British Government responsibility for the administration and payment of pensions to certain British subjects who had retired or retire from specified public services in Nigeria before 1st July 1979 and, in addition to such responsibility, for the award of pensions to those retiring after that date.

ELECTORAL (AMENDMENT) DECREE 1979



Decree No. 26

[26th June 1979]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1. The Electoral Decree 1977 is hereby amended as follows, that is—

Amendment
of 1977
No. 73.

(a) in subsection (4) of section 108 thereof, for the words "not later than 14 days" there shall be substituted the words "not later than 10 days" ;

(b) in section 119 thereof and—

(i) in subsection (2), the words "less than 3 days or" are hereby repealed ; and

(ii) in subsection (4), immediately after the words "as the case may be" in the first sentence therein there shall be inserted the words "and shall be accompanied by the respondent's reply." ;

(c) for the first sentence of subsection (1) of section 122 thereof, there shall be substituted the following, that is—

"When the respondent (in a petition claiming the seat for some other person) intends to give evidence to prove that the election of such other person was undue, the respondent shall at the time at which his reply is filed, file in the Tribunal a list of the objections to the election on which he intends to rely" ;

(d) in subsection (i) of section 123 thereof, for the words "at least 14 days" there shall be substituted the words "at least 7 days" ; and

(e) in the second sentence of subsection (2) of section 125 thereof, all the words immediately following the words "time barred" are hereby repealed.

2. This Decree may be cited as the Electoral (Amendment) Decree 1979.

Citation.

MADE at Lagos this 26th day of June 1979.

GENERAL O. OBASANJO,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its effect)

The Decree amends the Electoral Decree 1977 and slightly abridges the periods specified for taking certain procedural steps in connection with election petitions in order to enable petitions to be disposed of expeditiously and within the time limits laid down in section 117 of the Decree, that is—

- (a) in the case of election petition relating to the President or Vice-President, not later than one month from the date of the election ; and
- (b) in all other cases, not later than two months from the date of the relevant election.