Legal & Commercial Terms

The Ministry of Energy and Energy Industries is the custodian for the Oil and Gas Sector and manages all matters related to their exploration and development. This regulatory role is enshrined in several pieces of legislation (available online at http://rgd.legalaffairs.gov.tt/Laws2/main.html) and the operational and fiscal aspects of the energy sector are presently governed by the following:

1. The Petroleum Act 1969
2. The Petroleum Regulation of 1970
3. The Petroleum Taxes Act
4. The Income Tax (In Aid of Industry) Act
5. The Income Tax Act
6. The Petroleum Production Levy and Subsidy Act
7. The Unemployment Levy
8. The Green Fund Levy.
9. Environmental Management Act (EMA) 2000
10. Occupational, Safety and Health Act (OSHA)

The Petroleum Act and its subsidiary regulations outline the framework that governs the conduct of petroleum operations and is administered by the Minister of Energy and Energy Industries. On the other hand, the Petroleum Taxes Act is administered by the Minister of Finance and establishes the framework for the taxation of companies engaged in petroleum operations.

The regulatory framework in Trinidad and Tobago has evolved over the years from a purely concessionary arrangement with the Exploration and Production (E&P) Licence being the instrument of choice to a fairly sophisticated Production Sharing Contract (PSC). There are variations existing with all these arrangement as the form of agreement has been revised and refined over the years.

The fiscal regime for companies operating under an E&P Licence includes a Royalty, a sliding-scale Supplemental Petroleum Tax (SPT), which is the subject of revision at the current time, Petroleum Profit Tax of 50%, and a 5% Unemployment Levy charged on the base for Petroleum Profit Tax. A production levy up to 3% of Gross Income is also payable. It is to be noted that revenues from natural gas are not subject to SPT.

The terms of the PSC are being reviewed by the Ministry of Energy and Energy Industries. The previous model used was the Taxable PSC where the contractor pays Petroleum Profits Tax of 50% and Unemployment Levy of 5% charged on the base for Petroleum Profit Tax, Green Fund Levy and Witholding Tax production. There was no obligation to pay Royalty, Supplemental Petroleum Taxes, Petroleum Production Levy or Petroleum Impost. However there was a Share of Petroleum which was payable to the State. The minimum and maximum share was prescribed and bidders may increase the minimum table by a maximum of 2 or any factor between 1 and 2.

Over the past calendar year, the critical review of fiscal and legal terms and procedures was aimed at ultimately stimulating exploration and development activity. The primary objective was to design a flexible fiscal regime that would:

1. Enhance marginal field activities
2. Extend the life of mature fields
3. Provide incentives for the development of heavy oil resources and enhanced oil recovery schemes
4. Allow for equitable sharing of the economic rents

It is proposed that the PSC be based on three groupings:

(1) Blocks in water depth less than 400m will be considered "shallow water";

(2) Blocks in water depth from 400 to 1000m will be considered "average water depth";

(3) Blocks in water depth greater than 1000m will be considered "deep water";

Overall, the changes are intended to provide better transparency and consistency in the management of the Contract. It is proposed that carried participation be exempted from deep water depths and be limited to 20% in shallow and average water depths. Cost recovery for both oil and gas will be fixed based on the different water depths while profit sharing will remain a biddable item, subjected to a predetermined matrix of price and level of production. There will be an overall reduction in Windfall Profit Rate while all bonuses and financial obligations will be fixed except for the Signature bonus, which will now be used as a tiebreaker in deep water blocks.

The new framework for natural gas will include a mechanism for determining the Government's share of profit petroleum and minimum gas price within the PSC while the same mechanism will be used for value export gas for tax purposes. Gas marketing will not be restricted to the local market as in previous contracts and Contractors can now explore options for export or joint marketing.

The review committee was also sensitive to current tax procedures that were either outdated or difficult to implement. With the recommended changes, taxation will no longer be dictated by ambiguous definitions such as “land” and “marine” or “pre-1988” and “post-1988”. For example, it is proposed that the Supplemental Petroleum Tax instead be subjected to a single-scale that considers the product price and volume and computed on a field-by-field basis (or sub-license), irrespective of location. This will be applicable to both oil and gas, while the latter will be deductible for Petroleum Profit Tax (PPT). Tax credits are also proposed to encourage enhanced oil recovery schemes.

In summary, it is envisaged that the new contractual terms reduce the risk to investors, offer incentives at lower production levels and consider cost environments for different water depth. Consideration was given to both oil and gas ventures with an emphasis on marginal fields in both financial obligations and taxation.