

**FISCAL PROVISIONS IN THE PETROLEUM (EXPLORATION AND PRODUCTION)(GENERAL) REGULATIONS, 2018, LI 2359**

71. (1) Royalty to be paid under a petroleum agreement shall be
- (a) specified in the tender documents as a biddable fiscal item; or
  - (b) indicated in the relevant documents for an invitation for direct negotiation.
- (2) The royalty volumes shall be measured and calculated
- (a) in accordance with the Petroleum (Exploration and Production) (Measurement) Regulations, 2016 (L.I. 2246) and on a daily basis per producing field; or
  - (b) per contract area, if determined by the Minister.
- (3) Where the Minister has not directed a contractor to undertake the transportation, processing and storage of royalty petroleum in accordance with subsection (4) of section 85 of the Act, that contractor shall
- (a) deliver the quantity of oil to be paid as royalty to the Corporation; or
  - (b) make available the Freight-On-Board for the Corporation to lift in accordance with the relevant lifting schedule at the agreed delivery point.
- (4) Where the Minister in accordance with subsection (3) of Section 85 of the Act directs that a contractor pays royalty to the Republic in cash, the royalty shall be calculated at the agreed percentage of the value of the gross volume of petroleum produced and saved.
- (5) Where royalty is to be paid in cash, a contractor shall pay the royalty in accordance with the provisions of Section 85 of the Act and the Petroleum Revenue Management Act, 2011 (Act 815).
- (6) Subregulation (2) shall
- (a) apply as a basis for the calculation of the royalty amount due to the Republic, and
  - (b) be the relevant weighted average market price for the relevant period as determined in accordance with regulation 77.
- (7) The Corporation and an operator of a facility for the transportation, processing or storage of petroleum into which royalty of petroleum is delivered in accordance with Subsection (4) of Section 85 of the Act, shall
- (a) ensure that volumetric or calorific measurements of petroleum received are recorded on a daily basis, and
  - (b) sign a consignment receipt which specifies the volumes actually received by the Corporation and the operator.
- (8) Where royalty on the production of natural gas is to be paid in cash, the value of the natural gas shall be the actual price realised by a contractor, less
- (a) costs of transportation, processing, compression, liquefaction, if applicable, and
  - (b) marketing costs which shall be calculated in accordance with the principles underlying the accounting guide of the petroleum agreement.

(9) Where the actual price realised in accordance with subregulation (8) is a negative amount, the royalty share on natural gas of the Republic shall be deemed to amount to zero and a contractor shall not set off or deduct any negative royalty amount in any royalty to be paid on crude oil

- (a) in cash or in kind; or
- (b) in any other fees or taxes.

(10) Where a contractor pays royalty in kind or in cash, the contractor shall, simultaneously with the payment, provide the Minister and the Corporation with a statement which specifies

- (a) the gross volume of petroleum produced and saved for the month in question, and
- (b) how the royalty paid by the contractor is in compliance with Section 85 of the Act and this regulation.

### **Annual acreage fee**

72. (1) A contractor shall pay an annual acreage fee per square kilometre, as specified in the Second Schedule, of the contract area remaining at the beginning of each contract year as part of the contract area.

(2) A contractor shall directly transfer the amount calculated in accordance with subregulation (1) into the Petroleum Holding Fund.

(3) The annual acreage fees specified in subregulation (1) shall be calculated pro-rata where

- (a) the beginning of a period and the end of a period, or
- (b) the creation of a development and production area, occurs during the course of a calendar year.

### **Rental fees**

73. (1) A contractor shall pay for rental of Government property, specific public lands or for the provisions of specific services requested by the contractor from a public institution.

(2) The rates charged in subregulation (1) shall not exceed the prevailing rates charged to any other member of the public who requests for similar rental or service.

### **Bonus payment**

74. (1) The Minister may require a contractor to pay

- (a) a signature bonus upon the ratification of a petroleum agreement, and
- (b) a production bonus at the first anniversary of commencement of petroleum production.

(2) The Minister may

- (a) specify the amount of the bonus to be paid in subregulation (1); or
- (b) allow for competitive bidding of the amount of bonus in subregulation (1).

(3) A contractor shall pay the bonuses specified in subregulation (1) to the Republic into the Petroleum Holding Fund.

(4) A bonus payment is not recoverable as petroleum cost under the petroleum agreement.

### **Additional oil entitlement**

75. (1) A contractor shall deliver to the Republic any additional oil entitlement from the share of petroleum produced by the contractor from each field

- (a) on the basis of the after-tax inflation-adjusted rate of return that the contractor achieves with respect to each field as stipulated in the applicable petroleum agreement, and

(b) calculated in accordance with the formula set out in the Third Schedule.

(2) Where a contractor achieves an after-tax inflation-adjusted rate of return that exceeds the target level as stipulated in the applicable petroleum agreement, the contractor shall deliver to the Republic the additional oil entitlement not later than three months after the period in which the rate of return was achieved.

(3) The Republic may elect to receive cash in place of the additional oil entitlement share of petroleum.

(4) Each contractor party shall within thirty days after the end of the quarter, file quarterly additional oil entitlement returns in the prescribed format to the Ghana Revenue Authority and provide copies to the Ministry, the Ministry of Finance, the Commission and the Corporation.

### **Lifting and marketing of petroleum**

76. (1) A contractor and the Corporation may, through consultation, enter into a supplementary agreement in relation to the following:

- (a) procedures for lifting of petroleum,
- (b) lifting and lifting schedules,
- (c) loading conditions,
- (d) petroleum metering, and
- (e) the settlement of lifting imbalances, if any.

(2) A lifting arrangement shall specify the following conditions:

- (a) the lifting of petroleum by the parties is to be carried out so as to avoid interference with petroleum operations;
- (b) the lifting rights and schedules are subject to operations, tolerances and constraints so that each party to the extent possible is entitled to lift full cargo loads; and
- (c) that within reasonable limits and subject to future correction of imbalances, each party may lift more or less than the lifting entitlement of each party so as to allow the lifting of full cargo loads.

(3) A contractor shall make available on a monthly basis to the Commission, all relevant marketing information including sales purchase contracts relevant for petroleum sold, regardless of whether the sales arrangement is done through a trading agent of the contractor or a third party.

### **Pricing of petroleum**

77. (1) For purposes of regulations 71 to 78, the market price for petroleum produced and lifted by a contractor under a petroleum agreement shall be established with respect to each lifting or other period based on the prices actually realised by that contractor in an arm's length commercial transaction.

(2) Where

- (a) a contractor has not sold its entitlement oil during the period in question, or has sold petroleum to a related party, or
- (b) petroleum of that quality has not been sold in that period, the market price shall be determined by reference to world market prices of comparable produced petroleum sold in an arm's length transaction for export on the major world petroleum market, and adjusted for differences in oil quality, location, timing and conditions of pricing, delivery and payment.

(3) Where the contractor cannot identify a comparable produced petroleum for the purposes of this regulation, the Minister may agree to an alternative method for establishing a comparable type of produced petroleum.

(4) Where petroleum sales which is not at "arm's length" relate only to the part of the entitlement of the contractor, the prices actually realised by the contractor in sales of the balance of the share of the contractor shall be taken into account in determining market price.

(5) The price of produced petroleum shall be expressed in United States Dollars per barrel, Freight-On-Board at the applicable delivery point for the contractor.

(6) Where petroleum of various quality grades are produced from a contract area, the market price shall be determined separately for each type sold or exported by a contractor.

(7) Subregulation (6) applies only to the extent that the different quality grades

(a) remain segregated through to the point where they are sold; or

(b) are commingled into a common stream.

(8) The Commission

(a) may agree on an equitable methodology for assessing relative value for each grade of produced petroleum comprising the blend, and

(b) shall implement the agreed methodology for having the producer of higher quality produced petroleum to be reimbursed by the producer of lower quality produced petroleum.

(9) Where the Republic or the Corporation, and a contractor enter into a commercial agreement for petroleum purchase by the Republic or the Corporation, the price for petroleum under the petroleum agreement shall not exceed the price of petroleum sold to an affiliated company of the contractor.

(10) Where the Minister requests that a contractor sells to the Republic petroleum for a domestic supply requirement, the price for natural gas shall be based on the prevailing market price in the country taking into account the costs incurred by the contractor and a fair consideration for the investment risk of the contractor.

(11) The price in subregulation (10) shall not exceed

(a) the price of petroleum sold to an affiliate of the contractor; or

(b) the lowest market price for gas produced in the country and sold to a third party outside the jurisdiction.

(12) For purposes of this regulation,

(a) "comparable produced petroleum" means produced petroleum of similar gravity, sulphur content and acidity approved by the American Petroleum Institute; and

(b) "arm's length commercial transaction" means sales to a purchaser independent of the seller, which does not involve

(i) produced petroleum exchange or barter transactions,

(ii) government to government transactions,

(iii) sales directly or indirectly to affiliates, or

(iv) sales involving consideration other than payment in United States Dollars or currencies convertible or affected in whole or in part by considerations other than the usual economic incentives for commercial arm's length sales of produced petroleum.