

CHAPTER 82

PETROLEUM WINNING OPERATIONS TAXATION 1958-43

This Act came into operation on 12th January, 1959.

Amended by:

1967/168
1979-48

1981-18
1982-17

1982-41

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

Notes:

Act 1981—18 (Cap. 109A) has not been proclaimed.

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 82

PETROLEUM WINNING OPERATIONS TAXATION 1958-43

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**BARBADOS****PETROLEUM WINNING OPERATIONS TAXATION
1958-43**

An Act to provide for the levying and collection of a tax upon the profits arising or accruing to persons engaged in petroleum winning operations and to exempt such persons from certain taxes and rates.

[Commencement: 12th January, 1959]

Short title

1. This Act may be cited as the *Petroleum Winning Operations Taxation Act*.

PART I**PRELIMINARY****Interpretation**

- 2.(1) For the purposes of this Act, the expression

“accounting period” means

- (a) where accounts in respect of petroleum winning operations are made up for a period of 12 months, such period; or
- (b) where accounts in respect of petroleum winning operations
 - (i) are made up for a period greater or less than 12 months; or
 - (ii) have not been made up,

such period not exceeding 12 months as the Commissioner may determine;

“barrel” means a measure of capacity equal to 42 gallons as defined by the *Weights and Measures Act*, Cap. 331;

“chargeable profits” means profits ascertained in accordance with section 7;

“Commissioner” means the Commissioner of Inland Revenue;

“concession holder” means any person holding or who has held a licence or lease granted under section 4 of the *Petroleum Winning Operations Act*, Cap. 281, and includes a person who having or having had an interest in any licence or lease so granted to another person participates with or has participated with that other person in the costs, expenses and profits of any operation for which such licence or lease was so granted;

“effective date” in relation to a concession holder means

- (a) the date on which the concession holder first reaches as a result of all or any petroleum winning operations engaged in by him (including any such operations in which he participates with one or more other concession holders) a level of regular exports of petroleum averaging 10 000 or more barrels a day measured over a period of 30 consecutive days; or
- (b) the date on which expires a period of 5 years beginning on the date on which as a result of any petroleum winning operations engaged in by the concession holder (including any such operations in which he

participates with or has participated with one or more other concession holders) petroleum was first regularly exported by him,

whichever is the earlier;

“Income Tax Appeal Board” means the Income Tax Appeal Board established under section 58 of the *Income Tax Act*, Cap. 73;

“overriding royalty” means a payment by a concession holder to a person not a concession holder based upon, or in some way calculated in reference to, the amount and value of petroleum produced under the terms of a licence or lease granted under section 4 of the *Petroleum Winning Operations Act*, Cap. 281;

“petroleum” includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, bitumen or asphalt and includes all crude oil and casing head spirit which has been processed from such mineral oil or relative hydro-carbon and natural gas but does not include tarsand, manjak, coal or bitumen shales or other stratified deposits from which oil can be extracted by destructive distillation;

“petroleum winning operations” means the winning or obtaining in the Island or the territorial waters thereof of petroleum by any method or means in the course of a trade carried on by a concession holder and includes any process necessary to reduce oil so won or obtained to a marketable condition as crude oil or to produce casing head spirit in a marketable condition from relative hydrocarbon and natural gas but does not include any subsequent process or refinement of such oil or spirit;

“precedent partner” means the partner who, of the partners resident in the Island,—

- (a) is first named in the agreement of partnership; or
- (b) if there be no agreement, is named singly or with precedence to the other partners in the usual name of the firm;

“qualifying capital expenditure” means expenditure incurred by any concession holder in connection with, or in preparation for, the winning or obtaining in the Island or the territorial waters thereof of petroleum—

- (a) on the purchase of information relating to the existence and extent of such deposits; or
- (b) on searching for or on discovering and testing deposits or winning access thereto including the costs of drilling a productive well; or
- (c) on the construction of any works which are likely to be of little or no value when the source of the petroleum deposits is no longer worked; or
- (d) on the cost of drilling wells not productive of petroleum or not productive of petroleum in quantities which the Commissioner considers to be commercial quantities; or
- (e) on organising and initiating petroleum winning operations in the Island or in the territorial waters thereof:

Provided that the expression “qualifying capital expenditure” does not include—

- (i) any expenditure on the acquisition of, or of rights in or over, petroleum deposits, or any expenditure on the acquisition of the site of the source, or of the site of any such works as aforesaid, or of rights in or over any such site; or
- (ii) any expenditure on the provision of machinery or plant or on any asset which has been treated in an accepted return for any accounting period as machinery or plant; or
- (iii) any expenditure on works constructed wholly or mainly for subjecting the raw product of the source to any process, except a process designed for preparing the raw product for use as such; or

- (iv) any expenditure on buildings or structures provided for occupation by or for the welfare of workers; or
- (v) any expenditure on a building where the whole of the building was constructed for use as an office; or
- (vi) any expenditure on so much of a building or structure as was constructed for use as an office; or
- (vii) any expenditure which is allowed to be deducted under section 8;

“resident in the Island”, when applied to an individual, means an individual who resides in the Island except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in the Island and, when applied to a company or body of persons, means a company or body of persons incorporated or registered in this Island or the control and management of whose business are exercised in the Island;

“royalties” means the sums payable in consideration of the grant of a licence or lease under section 4 of the Petroleum Winning Operations Act and computed in accordance with section 6 of that Act;

“tax” means the tax ascertained in accordance with section 24.

(2) For the purposes of this Act, the date at which qualifying capital expenditure or other capital expenditure is incurred shall be the date at which the sums in question become payable.

(3) Any reference in this Act to any asset, building, structure, machinery, plant or works shall be construed as including a reference to a part of any asset, building, structure, machinery, plant or works:

Provided that where the reference is expressed to be to the whole of a building or structure, this subsection shall not apply.

(4) Wherever by this Act a discretion is conferred on the Commissioner, the discretion may be exercised on appeal under section 37 by the Income Tax Appeal

Board where the appeal is made to the Board and on appeal under the said section by a Judge where the appeal is made to the High Court.

PART II ADMINISTRATION

Administrative authority

3.(1) This Act shall be administered by the Commissioner, who shall be responsible for the assessment and collection of the tax chargeable under this Act and shall pay all amounts collected in respect thereof into the Consolidated Fund.

(2) The Commissioner may, in writing or by notice in the *Official Gazette*, authorise any person within or without the Island to perform, or to assist in the performance of, any duty imposed upon the Commissioner by this Act.

(3) Every person having any official duty in the administration of this Act, or being employed for the purpose of the administration of this Act, or being authorised under this section, shall act in accordance with the lawful instructions of the Commissioner.

Official secrecy

4.(1) Every person, having any official duty in the administration of this Act and having possession of or control over any documents, accounts or information relating to petroleum winning operations and the amount and value of petroleum won as a result of any such operations, who at any time communicates or attempts to communicate or aids or abets in the communication of such information or anything contained in such documents or accounts to any person, except to a person to whom he is authorised by the Minister responsible for Finance to communicate it, or for the purposes of this Act or the *Income Tax Act*, Cap. 73, shall be guilty of an offence and liable on conviction therefor to a fine of five hundred dollars or to imprisonment for a term of three months or to both such fine and imprisonment.

- (2) Any proceedings for an offence against this section may be taken by the Commissioner but not by any other person except with the consent of the Director of Public Prosecutions.
- (3) The obligation as to secrecy imposed by section 51 of the Income Tax Act shall not prevent the disclosure to any person authorised under section 3 to administer or to assist in the administration of this Act of such facts as are necessary to enable the proper tax imposed by this Act to be charged or collected.
- (4) A person who, by reason of this Act, has possession of or control over any documents, accounts or information relating to petroleum winning operations and the amount and value of petroleum won as a result of any such operations shall, for the purposes of subsection (1), be deemed to have an official duty in the administration of this Act.

Service of notices

- 5.(1) A notice may be served on a person either personally or by being left at his usual or last known place of abode or by being sent through the post, addressed to such person at his usual or last known business or private address including any post office box number or private post-bag or—
- (a) in the case of a company incorporated in the Island, addressed to the manager of the company or any principal officer thereof in the Island at the registered office of the company; or
 - (b) in the case of a company incorporated outside the Island, addressed either to the manager of the company or any principal officer thereof in the Island at his last known business or private address or to the company at the principal registered office of the company wherever it may be situated; or
 - (c) in the case of a partnership, addressed to the precedent partner or, if there be no such partner, the manager of the partnership business at the last known business or private address of such partner or manager; or

- (d) in the case of a body of persons, addressed to such body at the last known business or other address of such body.
- (2) Where the notice is served by post, it shall be deemed to have been served on the day succeeding the day on which the notice would have been received or have been available for collection from the post-box or private post-bag in the ordinary course of the post.
- (3) Every notice to be given by the Commissioner under this Act shall be signed by the Commissioner or by such person as may from time to time be authorised by him for that purpose under subsection (2) of section 3 and every notice shall be valid if the signature of the Commissioner or such person is duly printed or written thereon.

PART III

IMPOSITION OF TAX AND ASCERTAINMENT OF CHARGEABLE PROFITS

Charge of tax and tax holiday

- 6.(1) Subject to subsection (2), for each accounting period there shall be charged, levied upon, collected from and paid by every concession holder engaged in petroleum winning operations to Her Majesty for the use of this Island a tax on the chargeable profits, assessed as hereinafter provided, arising or accruing to such concession holder and derived from such operations during such period whether such profits are received in this Island or not.
- (2) Such tax shall not be charged, levied upon, collected from or paid by such concession holder for any accounting period or part thereof prior to his effective date in respect of chargeable profits arising or accruing to him prior to that date and derived from such operations.

Ascertainment of chargeable profits

7. The chargeable profits of any accounting period of any concession holder engaged in petroleum winning operations shall be the remainder of the proceeds of all petroleum sold by, and all income incidental to those operations of, that concession holder during that period, after the deductions and allowances permitted to be made in favour of the concession holder pursuant to this Part have been made.

Deductions allowed in ascertainment of chargeable profits

8.(1) Subject to sections 9 and 17, there shall be deducted in computing the chargeable profits for any accounting period ending after the effective day of any concession holder engaged in petroleum winning operations, all losses, outgoings and expenses wholly and exclusively incurred whether in this Island or elsewhere during that accounting period by that concession holder in the production of those profits including—

- (a) sums payable by way of interest upon any money borrowed by the concession holder where the Commissioner is satisfied that the interest was payable on qualifying capital expenditure or other capital expenditure incurred in acquiring such profits;
- (b) any expenses incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income or for the renewal, repair or alteration of any implement, utensil or article so employed:

Provided that if such premises, plant, machinery, fixtures, implements, utensils or articles are employed in part for domestic or private purposes, so much of any such expenses as may be determined by the Commissioner to be in respect of such purposes shall not be so deducted;

- (c) debts directly incurred in the winning or disposal of petroleum and proved to the satisfaction of the Commissioner to have become bad or doubtful in the accounting period for which the chargeable profits are

being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period:

Provided that—

- (i) the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period, nor in respect of any particular debt shall it include any amount deducted under this paragraph in determining the chargeable profits of a previous accounting period;
- (ii) all sums recovered during the same period on account of bad or doubtful debts shall for the purposes of this Act be treated as income incidental to the petroleum winning operations of the concession holder for that accounting period;
- (iii) it is proved to the satisfaction of the Commissioner that the debts in respect of which a deduction is claimed were either—
 - (a) included as a receipt from the carrying on of petroleum winning operations in the accounting period in which they were incurred; or
 - (b) advances made in the normal course of petroleum winning operations not falling within paragraph (d) of section 9;
- (d) expenses of the head office of the concession holder:

Provided that so much of such expenses as the Commissioner is satisfied were incurred otherwise than in respect of the petroleum winning operations engaged in by the concession holder shall not be deducted;
- (e) any overriding royalty or royalties;
- (f) such other deductions as may be prescribed by any rule made under subsection (2).

(2) The Commissioner may by rules prescribe the method of calculating or estimating the deductions allowed or prescribed under this section.

Deductions not allowed in ascertainment of chargeable profits

9. Notwithstanding anything contained in section 8 or in any rules made thereunder but subject to any other express provision of this Act, for the purpose of ascertaining the chargeable profits arising from the petroleum winning operations of any concession holder no deduction shall be allowed in respect of—

- (a) any dues, rents, royalties, taxes or other imposts payable under the laws of this Island (including this Act);
- (b) domestic or private expenses;
- (c) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring such profits;
- (d) any capital withdrawn or any sum employed or intended to be employed as capital;
- (e) any capital improvements;
- (f) any sum recoverable under an insurance or contract of indemnity;
- (g) rent of or costs of repairs to any premises or part of premises not paid or incurred for the purpose of producing such profits;
- (h) any amounts paid or payable in respect of any income tax, profits tax or other similar tax charged elsewhere than within this Island;
- (i) the depreciation of any premises, buildings, structures or works of a permanent nature.

Option to accumulate or capitalise qualifying capital expenditure

10.(1) Every concession holder engaged in petroleum winning operations who has incurred any qualifying capital expenditure at any time after the grant

to him of a licence or lease under section 4 of the *Petroleum Winning Operations Act*, Cap. 281 shall be entitled at his option to accumulate or to capitalise such capital expenditure.

- (2) Notice in writing of the option created by subsection (1) shall—
- (a) in respect of any such capital expenditure incurred by the concession holder prior to his effective date, be served by him on the Commissioner not later than twenty-one days after the expiration of the first accounting period immediately following that date; and
 - (b) in respect of any such capital expenditure incurred by the concession holder during an accounting period or any part thereof commencing after his effective date, be served by him on the Commissioner not later than twenty-one days after the expiration of the accounting period during which such capital expenditure was incurred.
- (3) As from the date of service of a notice referred to in subsection (2) the option created by subsection (1) shall as respects such capital expenditure to which the notice relates be deemed to have been exercised and shall not be capable of change.
- (4) A notice required by subsection (2) shall state the date at which the capital expenditure to which it relates was incurred, the amount thereof and whether the same is to be accumulated or capitalised.
- (5) In the event of failure by a concession holder to comply with the provisions of this section as to the matters to be stated in a notice required by subsection (2) or as to the time within which the same shall be served, all qualifying capital expenditure which but for such failure as aforesaid might have been accumulated or capitalised shall be deemed to have been accumulated.

Deduction of accumulated capital expenditure

11. Subject to section 17, there shall be deducted, in computing the chargeable profits for any accounting period ending after the effective date of any concession holder engaged in petroleum winning operations, all qualifying

capital expenditure that has been accumulated by the concession holder or is deemed to have been accumulated by him:

Provided that the total amount of any deductions so made shall not, in respect of any such capital expenditure to which the deductions relate, exceed that capital expenditure.

Depletion allowance

12.(1) Subject to subsection (3) and section 17, in computing the chargeable profits for any accounting period ending after the effective date of any concession holder engaged in petroleum winning operations, the Commissioner shall make to such concession holder in respect of any qualifying capital expenditure that has been capitalised by him the allowance hereinafter referred to as a “depletion allowance”.

(2) A depletion allowance shall, in the case of all such capital expenditure incurred by the concession holder prior to his effective date, be the amount calculated at such rate not exceeding twenty per cent of such capital expenditure as the concession holder may elect and, in the case of any such capital expenditure incurred by the concession holder after his effective date, be the amount calculated at such rate not exceeding ten per cent of such capital expenditure as the concession holder may elect:

Provided that the total amount of any allowances so made shall not in respect of any such capital expenditure to which the allowances relate exceed that capital expenditure or that capital expenditure as reduced by any allowance made pursuant to section 16, whichever is the less.

(3) No depletion allowance shall be made in computing the chargeable profits for an accounting period of a concession holder engaged in petroleum winning operations unless the concession holder, by notice in writing served on the Commissioner not later than twenty-one days after the expiration of the accounting period, claims such allowance.

(4) A concession holder shall in the notice referred to in subsection (3) specify the rate at which the depletion allowance shall be made.

Annual allowances

13.(1) Where a concession holder engaged in petroleum winning operations has incurred capital expenditure on the provision of machinery or plant for the purpose of those operations, the Commissioner shall, subject to section 17, in computing the chargeable profits of the concession holder for an accounting period ending after the effective date, make to such concession holder the allowance hereinafter referred to as an “annual allowance” as representing the wear and tear during the accounting period in respect of which it is made of so much of such machinery or plant as belongs to such concession holder and is in use for the purposes of those operations at the end of such period.

(2) An annual allowance shall, in the case of any such capital expenditure incurred by the concession holder prior to his effective date, be the amount calculated at such rate not exceeding twenty per cent of such capital expenditure as the concession holder may elect and, in the case of any such capital expenditure incurred by the concession holder after his effective date, be the amount calculated at such rate not exceeding ten per cent of such capital expenditure as the concession holder may elect:

Provided that the total amount of any allowances so made shall not, in respect of any such capital expenditure to which they relate, exceed that capital expenditure.

(3) The rate at which an annual allowance shall be made shall be specified by the concession holder in the form of return required to be delivered by him under section 29.

Building alterations connected with installation of machinery or plant

14. Where a concession holder engaged in petroleum winning operations incurs capital expenditure on alterations to an existing building incidental to the installation of machinery or plant for the purposes of those operations, this Part shall have effect as if the said expenditure were expenditure on the provision of

that machinery or plant and as if the works representing that expenditure formed part of that machinery or plant.

Balancing allowances and balancing charges

15.(1) Where in any accounting period any of the following events occurs in the case of any machinery or plant in respect of which an annual allowance has at any time been made to a concession holder engaged in petroleum winning operations, that is to say either—

- (a) the machinery or plant is sold, whether while still in use or not; or
- (b) the machinery or plant is destroyed; or
- (c) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,

the Commissioner shall, in computing the chargeable profits of the concession holder for that accounting period, make to, or, as the case may be, on that concession holder in the circumstances mentioned in this section an allowance or charge, hereinafter referred to as a “balancing allowance” or “balancing charge”.

(2) Where there are no sale, insurance, salvage or compensation moneys or where the residual value of the machinery or plant exceeds those moneys, a balancing allowance shall, subject to section 17, be made and the amount thereof shall be the amount of the residual value of the machinery or plant or, as the case may be, of the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the residual value of the machinery or plant, a balancing charge shall be made and the amount thereof shall be equal to such excess or where the amount of such residual value is nil, to the said moneys:

Provided that in no case shall the amount on which a balancing charge is made on a concession holder exceed the aggregate of the following amounts, that is to say—

- (a) the amount of any annual allowance made to the concession holder in respect of the machinery or plant in question;
 - (b) the amount of any balancing allowance previously given to the concession holder in respect of the capital expenditure incurred by him on the provision of the machinery or plant in question.
- (4) Any amount charged as a balancing charge shall for the purposes of this Act be treated as income incidental to the petroleum winning operations of the concession holder on whom it is charged for the accounting period in respect of which it is charged.

Incentive allowance

16.(1) Subject to subsection (5), in computing the chargeable profits for any accounting period ending after the effective date of any concession holder engaged in petroleum winning operations, the Commissioner shall make to such concession holder the allowance, hereinafter referred to as an “incentive allowance”.

(2) An incentive allowance shall be an amount equal to ten per cent of the gross income of the concession holder:

Provided that if such amount exceeds fifty per cent of such gross income after the deductions and allowances permitted to be made in favour of the concession holder under the foregoing provisions of this Part have been made, the incentive allowance shall be an amount equal to fifty per cent of such gross income after taking into account all such deductions and allowances.

(3) For the purposes of this section, the gross income of a concession holder shall be the remainder of the proceeds of all petroleum sold by and all income incidental to the petroleum winning operations engaged in by that concession

holder during the accounting period in respect of which the incentive allowance is to be made, after deducting—

- (a) the cost of handling and transporting the petroleum sold from the well-head to the place of disposal within the Island; and
- (b) any royalties payable in respect of that accounting period by the concession holder to the Accountant-General under a lease or licence granted pursuant to the *Petroleum Winning Operations Act*, Cap. 281.

(4) When and so often as any incentive allowance is made to a concession holder, the total amount of any qualifying capital expenditure capitalised by the concession holder pursuant to section 10 and in respect of which a depletion allowance might have been claimed by the concession holder for the accounting period for which the incentive allowance is made shall be reduced by the amount of the incentive allowance then made.

(5) No incentive allowance shall be made in computing the chargeable profits for an accounting period of a concession holder engaged in petroleum winning operations if the concession holder within the time specified in subsection (3) of section 12 serves on the Commissioner the notice referred to in that subsection.

Deductions or allowances not deducted or made in an accounting period to be carried forward

17.(1) Where, in computing for any accounting period the chargeable profits of a concession holder engaged in petroleum winning operations, any sums allowed to be deducted under sections 8 or 11 or any allowances permitted to be made under sections 12, 13 or 15 exceed the gross income of the concession holder for that period or there is no gross income for that period, such excess or such sums, as the case may be, shall be carried forward to the next following accounting period and so on from such period to the next for a maximum of ten succeeding years or until such excess or such sums have been deducted or allowed, whichever is the earlier:

Provided that where, by reason of the discontinuance of the petroleum winning operations engaged in by the concession holder, the full deduction or

allowance of any such sums that may be deducted or allowed pursuant to this subsection has not been effected at the date of the discontinuance of such operations, no tax which has been paid under this Act shall be deemed to be repayable by reason of this subsection and any such tax due and unpaid shall be paid.

(2) For the purposes of subsection (1), the gross income of a concession holder for an accounting period shall be the amount of the proceeds of all petroleum sold by and all income incidental to the petroleum winning operations engaged in by the concession holder during that period.

Meaning of sale, apportionment of consideration, exchanges and surrenders of leasehold interests

18.(1) Any reference in this Part to the sale of any property includes a reference to the sale of that property together with any other property and, where property is sold together with other property, so much of the net proceeds of sale of the whole property as the Commissioner considers is properly attributable to the first-mentioned property shall, for the purposes of this Part, be deemed to be the net proceeds of the sale of the first-mentioned property and references to qualifying capital expenditure or to other capital expenditure incurred on the provision of or the acquisition of property shall be construed accordingly.

For the purposes of this subsection, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are or purport to be agreed for separate items of that property or that there are or purport to be separate sales of separate items of that property.

(2) Subsection (1) shall, with the necessary modifications, apply in relation to other sale, insurance, salvage or compensation moneys as it applies in relation to the net proceeds of sale.

(3) This Part shall have effect as if any reference therein (including a reference in subsections (1) and (2)) to the sale of any property included a reference to the exchange of any property and, in the case of a leasehold interest, also included a reference to the surrender thereof for valuable consideration, and any provisions

of this Part referring to sales shall have effect accordingly with the necessary adaptations and, in particular, with the adaptations that the reference to the net proceeds of sale and the price shall be taken to include reference to the consideration for the exchange or surrender and references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.

Special provisions as to certain sales

- 19.(1) Where on a sale of any property the Commissioner is satisfied that—
- (a) the buyer is a person over whom the seller has control or the seller is a person over whom the buyer has control, or both the seller and buyer are persons and some other person has control over both of them; or
 - (b) with respect to the sale or with respect to the transactions of which the sale is one, the sole or main benefit which might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under this Part,

and the property is sold at a price other than that which in the opinion of the Commissioner it would have fetched if sold in the open market, subsection (2) or subsection (3), as the case may be, shall apply.

(2) Where the sale is a sale of property other than machinery or plant, the Commissioner shall substitute for the price for which such property is sold the price which in his opinion it would have fetched if sold in the open market.

(3) Where the sale is a sale of machinery or plant, the Commissioner shall substitute for the price for which the machinery or plant is sold the residual value of the machinery or plant.

(4) For the purposes of subsection (1), the expression—

“control” in relation to a body corporate means the power of a person to secure, by means of holding shares or the possession of voting power in or in relation to that or any other body corporate or by virtue of any powers conferred by

the articles of association regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets or of more than one-half of the income of the partnership.

Effect in certain cases of succession to petroleum winning operations

20.(1) Where a concession holder succeeds to any petroleum winning operations engaged in by another person and by virtue of any of the provisions of subsection (2) of section 55 those operations are to be treated as discontinued, any property which, immediately before the succession takes place, was in use for the purposes of the discontinued operations and, without being sold, is, immediately after the succession takes place, in use for the purposes of the new petroleum winning operations shall, for the purposes of this Part be treated as if it had been sold to the successor when the succession takes place, and as if the net proceeds of the sale had been the price which in the opinion of the Commissioner that property would have fetched if sold in the open market.

(2) Where after the setting up and before the discontinuance of any petroleum winning operations which at any time are carried on in partnership anything is done for the purposes thereof, any allowance, deduction or charge which, if those operations had at all times been carried on by one and the same person, would have fallen to be made to or on him under this Part, shall be made to or on the person or persons from time to time carrying on those operations, and the amount of any such allowance, deduction or charge shall be computed as if that person or those persons had at all times been carrying on those operations and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

Extension of meaning of “ in use ”

21. For the purposes of this Part, machinery or plant shall be deemed to be in use during a period of temporary disuse.

Assets used or expenditure incurred partly for the purpose of petroleum winning operations

22.(1) This section shall apply where either or both of the following conditions apply with respect to any asset—

- (a) the owner of the asset has incurred in respect thereof qualifying capital expenditure or other capital expenditure for the purposes of petroleum winning operations engaged in by him and partly for other purposes;
- (b) the asset in respect of which qualifying capital expenditure or other capital expenditure has been incurred by the owner thereof is used partly for the purposes of petroleum winning operations engaged in by such owner and partly for other purposes.

(2) Any allowances, deductions or charges which would be made if both such expenditure were incurred wholly and exclusively for the purposes of such petroleum winning operations and such asset were used wholly and exclusively for the purposes of such operations shall be computed.

(3) So much of the allowances, deductions or charges computed in accordance with subsection (2) shall be made as, in the opinion of the Commissioner, is just and reasonable having regard to all the circumstances and to the provisions of this Act.

Interpretation of Part III

23. Any reference in this Part to—

- (a) the time of any sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier;
- (b) the residual value of any machinery or plant shall be construed as the amount of the capital expenditure incurred on the provision of the machinery or plant or that amount less any annual allowances made in respect of the machinery or plant, whichever is the less.

PART IV

ASCERTAINMENT OF TAX

Ascertainment of tax

24. The amount payable as tax by a concession holder engaged in petroleum winning operations during an accounting period shall be the sum arrived at by deducting from an amount, hereinafter referred to as “ assessable tax ”, calculated at the rate of fifty per cent of the chargeable profits of the concession holder for that period, any amounts that may be deducted pursuant to section 25.

Deductions allowed from assessable tax

25.(1) In determining under section 24 the tax payable by a concession holder for an accounting period, there shall be deducted from the assessable tax—

- (a) all royalties, other than overriding royalties, paid or payable by that concession holder during that period in respect of petroleum won;
- (b) all sums paid by the concession holder during that period in respect of the petroleum winning operations engaged in by him to the Crown, to the Interim Commissioner for Local Government by way of taxes, rates, rents, dues or other imposts, not including fees, payable under the laws of this Island:

Provided that no deduction shall be allowed in respect of customs dues paid in respect of any imported article which, in the opinion of the Commissioner, is not required or intended for use for petroleum winning operations.

(2) Where for any accounting period any royalties or sums allowed to be deducted under subsection (1) exceed the assessable tax or where for any accounting period there is no assessable tax, such excess or such royalties or sums, as the case may be, shall be carried forward to the next following accounting period and so on from such period to the next until the full deductions shall have been made:

Provided that where, by reason of the discontinuance of any petroleum winning operations, the full deduction of any royalties or sums allowed to be deducted under this section has not been effected at the date of the discontinuance of such operation, no tax which has been paid shall be deemed to be repayable by reason of this subsection and any tax due and unpaid shall be paid.

PART V
PERSONS CHARGEABLE

Concession holders not resident in the Island

26.(1) A concession holder not resident in the Island (hereinafter in this section referred to as a “ non-resident concession holder ”) shall be assessable and chargeable to tax either directly or in the name of his manager or in the name of any other person who is resident in the Island and is employed in the management of the petroleum winning operations carried on by such non-resident concession holder, as such non-resident concession holder would be assessed and charged if he were resident in the Island.

(2) The person in whose name a non-resident concession holder is assessable and chargeable shall be answerable—

- (a) for all matters which may be required to be done by such non-resident concession holder by virtue of this Act for the assessment of such non-resident concession holder as if he were resident in the Island; and
- (b) for paying any tax assessed and charged upon him by virtue of subsection (1).

Manager of company, etc., to be answerable

27.(1) The manager or any principal officer in the Island of every company or body of persons shall be answerable for doing all such acts as are required to be done by virtue of this Act for the charge to tax of such company or body and for payment of the tax.

(2) In the case of a partnership engaged in petroleum winning operations, the precedent partner or, if there be no such partner, the manager, shall be answerable for doing all such acts as are required to be done by virtue of this Act for the charge to tax of such partnership and for payment of the tax.

(3) In the case of the death of a person who, if he had not died, would under this Act have become chargeable to tax for any accounting period, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.

Indemnification of representative

28. Every person answerable under this Act for the payment of tax on behalf of another person may retain out of any money coming to his hands or within his *de facto* control on behalf of such other person so much thereof as shall be sufficient to pay the tax and shall be and is hereby indemnified against any person whatsoever for all payments made by him in accordance with this Act.

PART VI

RETURNS

Returns in respect of profits arising from petroleum winning operations

29.(1) Every concession holder who is or has been engaged in petroleum winning operations, when required to do so by any notice in writing given in pursuance of this Act, shall within the time limited by such notice, not being less than twenty-one days, prepare and deliver to the Commissioner a true and correct return in writing signed by such concession holder, containing the amount of the profits arising from such operations during such accounting period or periods as may be specified in such notice.

- (2) Such return shall contain a declaration, which shall be signed by any concession holder to whom a notice has been given under subsection (1), that the particulars given in such return are true and correct.
- (3) Every concession holder who has been required to prepare and deliver a return and sign the declaration mentioned in the foregoing provisions of this section shall do so whether or not he is chargeable with tax under this Act.
- (4) Every concession holder chargeable with tax under this Act for any accounting period who has not been required within three months after the end of such accounting period to make a return of his chargeable profits for that accounting period as provided in subsection (1) shall, within twenty-one days after the expiration of that period, give notice to the Commissioner that he is so chargeable.

Commissioner may call for further information

30. The Commissioner may give notice in writing to any concession holder who is or has been engaged in petroleum winning operations when and as often as he thinks necessary requiring such concession holder to furnish within the time limited by such notice fuller or further information as to any of the matters either referred to in section 29 or as to any matters which the Commissioner may consider necessary for the purposes of this Act.

Power to call for returns, books, etc.

31.(1) For the purposes of obtaining full information in respect of any concession holder's chargeable profits, the Commissioner may give notice to such concession holder requiring him within the time limited by such notice, which time shall not be less than thirty days from the date of service of such notice, to complete and deliver to the Commissioner any return specified in such notice and in addition or alternatively requiring him to attend before him and to produce for examination any books, documents, accounts, returns or other records which the Commissioner may deem necessary.

(2) Where a concession holder fails or refuses to keep records, books or accounts which, in the opinion of the Commissioner, are adequate for the purposes of ascertaining the tax, the Commissioner may by notice in writing require him to keep such records, books and accounts as the Commissioner considers to be adequate in such form and in such language as he may in the said notice direct and the concession holder shall keep records, books and accounts as directed.

Power to extend time limited by notices calling for returns and information

32.(1) Where it is shown by any concession holder to the satisfaction of the Commissioner that owing to some reasonable cause that concession holder is not able to make a return required by sections 29 or 31, or to furnish such fuller or further information as may be required under section 30, within the time limited by any notice given under the said sections, the Commissioner may grant such extension of the time so limited as he may consider necessary.

(2) Where under subsection (1) an extension of the time specified in that subsection is granted by the Commissioner, the concession holder to whom such extension is granted shall, within fourteen days of the granting of such extension, furnish a return of an estimate to the best of his knowledge and belief of the chargeable profits resulting from the petroleum winning operations in respect of which the return is required.

PART VII
ASSESSMENTS

Commissioner to make assessments

33.(1) The Commissioner shall assess every concession holder engaged in petroleum winning operations during an accounting period as soon as may be after the end of that period.

(2) Where a concession holder has delivered a return, the Commissioner may—

- (a) accept the return and make an assessment accordingly; or
- (b) refuse to accept the return and, if he thinks fit, proceed as provided in subsection (3) upon a failure to deliver a return and the like consequences shall ensue.

(3) Where a concession holder has not delivered a return or furnished the information required—

- (a) within the time specified in any notice given under sections 29, 30 or 31; or
- (b) within any extended time under section 32,

as the case may be, and the Commissioner is of opinion that such concession holder is liable to pay tax, he may, according to the best of his judgment, estimate the amount of the tax to be paid by that concession holder for the accounting period for which any return or information is required and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by the concession holder by reason of his failure or neglect to deliver a return or to furnish the information:

Provided that nothing in this subsection shall affect the right of the Commissioner to make any additional assessment under section 34 or to certify any repayment under section 44, if upon ascertainment of the relevant facts it appears to the Commissioner that any such additional assessment or repayment, as the case may be, should be made.

Additional assessments

34.(1) Where the Commissioner discovers or is of opinion at any time that any concession holder liable to tax has not been assessed or has been assessed at a less amount than that at which he ought to have been assessed, the Commissioner may, subject to subsection (2), assess such concession holder as

often as may be necessary at such amount or additional amount as, according to his judgment, ought to have been charged.

(2) After the expiration of six years from the end of an accounting period in respect of which a concession holder has made a return pursuant to this Act an assessment shall not be made upon such concession holder in respect of that accounting period.

Record of concession holders assessed, notices of assessment, and receipt evidencing payment of tax

35.(1) The Commissioner shall, after making an assessment in accordance with this Act, enter the name and address of the concession holder assessed, the amount of the assessable tax, if any, the amount of the tax, if any, and such other particulars as the Commissioner may consider necessary in a register to be prepared and kept by him.

(2) The Commissioner shall, in respect of each assessment, cause to be served upon each concession holder assessed a notice of assessment stating the amount of chargeable profits, if any, liable to tax, the amount of the assessable tax, if any, the amount of the tax, if any, the place at which and the time by which payment of the tax should be made and informing the concession holder of his rights under Part VIII.

(3) Upon payment of the tax the Commissioner shall send to the person by whom the same was paid a receipt evidencing the payment and shall, if so required by such person, send with the receipt a certificate stating the amount of the profits assessed.

PART VIII
OBJECTIONS AND APPEALS

Objections

36.(1) Any concession holder who disputes an assessment made upon him in accordance with this Act, may apply to the Commissioner, by notice of objection in writing, to review and revise the assessment so made on him.

(2) Section 57 of the *Income Tax Act*, Cap. 73, which relates to objections against assessments for the purposes of the Income Tax Act shall, with such modifications or adaptations as may be necessary, apply to objections made under this section in like manner as they apply to objections made under subsection (1) of section 57 of the Income Tax Act, and a reference therein to any notice shall be construed as a reference to the notice referred to in subsection (1).

Appeals

37.(1) Any concession holder aggrieved by any decision of the Commissioner on his objection may appeal against the assessment to the Income Tax Appeal Board and the Commissioner or any such concession holder if aggrieved by the decision of the Board may then appeal to the High Court:

Provided that any such concession holder may, in lieu of appealing from the decision of the Commissioner on his objection to the Income Tax Appeal Board, appeal direct from that decision to the High Court.

(2) The provisions of sections 59 and 60 of the Income Tax Act, which relate to appeals to the Income Tax Appeal Board and to appeals to the High Court for the purposes of the Income Tax Act shall, with such modifications or adaptations as may be necessary, respectively apply to appeals made under subsection (1) in like manner as they respectively apply to appeals to the Income Tax Appeal Board and to the High Court for the purposes of the Income Tax Act.

[1967/168]

Assessments to be final and conclusive

38.(1) Except as expressly provided in this Act, where no valid objection has been lodged against any assessment as mentioned in subsection (1) of section 36 or where after the determination of an objection made under the said subsection no appeal has been made under subsection (1) of section 37 or where the amount of any assessment has been determined whether by the Income Tax Appeal Board or the High Court or any higher court and no appeal has been made therefrom, the assessment as made or determined, as the case may be, shall be final and conclusive for all the purposes of this Act as regards the amount of such assessment.

(2) Where an appeal has been made against an assessment and then withdrawn and not proceeded with within the time required by this Act or any other law relating thereto, such assessment as made or determined shall be final and conclusive as aforesaid.

(3) Nothing in this Part shall prevent the Commissioner from making any assessment or additional assessment for any accounting period which does not involve re-opening any matter relating to that period which has been determined on an appeal.

PART IX**COLLECTION, RECOVERY AND REPAYMENT OF TAX****Payment of tax**

39.(1) Subject to this section, the tax appearing in the register referred to in subsection (1) of section 35 shall be paid by the concession holder upon whom it is assessed to the Commissioner within one month after the service of the notice of assessment:

Provided that the Commissioner may, for any good cause shown, extend the period within which such tax shall be paid to such period as he may think fit.

(2) Collection of the tax shall, in cases where there is an objection to the Commissioner or appeal pending, remain in abeyance until such objection is decided or appeal determined:

Provided that the Commissioner may in any such case enforce payment of that portion (if any) of the tax which is not in dispute.

(3) Where payment of the tax in whole or in part has been held over pending the result of an objection to the Commissioner or an appeal, the tax assessed or amended, as the case may be, shall be payable within sixteen days from the receipt by the concession holder assessed of notification of the tax payable.

Penalty for non-payment within time

40.(1) Where any tax is not paid within one month after the service of the notice of assessment or within such extended time as the Commissioner may in any case think fit or where there has been an appeal, within sixteen days from the receipt by the concession holder of the notification referred to in subsection (3) of section 39, an additional duty of five per cent on the amount of the unpaid tax shall be added thereto and paid accordingly.

(2) Where any additional duties are payable or have been paid under subsection (1), it shall be lawful for the Minister responsible for Finance, where the circumstances of the case appear to warrant such indulgence, to remit such duties in whole or in part and, where the duties so remitted have been paid, to issue his warrant to the Accountant-General for the repayment of the same, and the Accountant-General is hereby authorised and required to repay the same accordingly.

Recovery of unpaid tax

41. All unpaid tax may be recovered on the complaint of the Commissioner before a magistrate of District A.

Service of summons

42. In any proceedings for the recovery of any tax due and not paid, where the defendant is absent from the Island or cannot after reasonable enquiry be found, service of the summons may, with the leave of the magistrate, be effected by posting a duplicate copy thereof in a letter addressed to the defendant at his present or last known place of abode or business whether in this Island or elsewhere.

Evidence of tax due

43. In any proceedings under section 41, the production of an extract from the register mentioned in section 35 verified under the hand of the Commissioner giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence of the amount so due and sufficient authority for the magistrate to give judgment for the said amount.

Repayment of tax

44.(1) Where it be proved to the satisfaction of the Commissioner that any concession holder has paid any tax in excess of the amount with which he has become charged by a final and conclusive assessment, such concession holder shall be entitled to have the amount so paid in excess refunded.

(2) Every claim for repayment under this section shall be made within six years from the end of the accounting period to which such claim relates.

(3) The Commissioner shall give a certificate of the amount to be repaid and upon the receipt of such certificate the Accountant-General shall cause repayment to be made in accordance therewith.

PART X
OFFENCES AND PENALTIES

Failure to comply with notice or summons

45. Any person who, without reasonable excuse, fails to comply with the requirements of a notice or summons served upon him under and in accordance with this Act shall be guilty of an offence and liable on conviction therefor to a fine of five hundred dollars or to imprisonment for one month or to both such fine and imprisonment and, in the case of default to comply with a notice requiring tax to be paid, shall in addition be liable to a fine of one hundred dollars for each day during which such default continues.

Incorrect returns made without reasonable excuse

46.(1) Any person who without reasonable excuse—

- (a) fails to make a return in accordance with this Act; or
- (b) makes an incorrect return which he is required by this Act to make; or
- (c) gives any incorrect information in relation to any matter or thing affecting his own liability or the liability of any other person to tax,

shall be guilty of an offence and liable on conviction therefor to a fine of five hundred dollars and double the amount of tax which has been discharged in consequence of such incorrect return or information or which would have been so undischarged if the return or information had been accepted as correct or which would have been charged if the return, which should have been made, had been made.

(2) No person shall be liable to the fine provided under this section unless proceedings for the recovery of the fine were commenced within six years after the act or omission to which the fine relates.

False statements made knowingly for the purpose of reducing tax

47. Any person who, for the purpose of obtaining any reduction in tax for himself or any other person, knowingly and wilfully makes any false return or false representation shall be guilty of an offence and liable on conviction therefor to a fine of one thousand dollars and treble the amount of the tax which the person assessable should be charged for the period in respect of which such false statement or representation is made and to imprisonment for a term of six months.

Penalties incurred by abettors, etc.

48. Any person who knowingly and wilfully aids, abets, counsels, incites or induces another person—

- (a) to make or deliver any false return required under this Act;
- (b) to keep or prepare any false accounts or particulars concerning any matter necessary to the ascertainment of the tax payable under this Act;
or
- (c) unlawfully to refuse or neglect to pay tax,

shall be guilty of an offence and liable on conviction therefor to a fine of one thousand dollars and to treble the amount of tax to which the person assessable is chargeable for the period to which the act or omission relates.

Mitigation of penalties

49. The Commissioner may, in his discretion, mitigate any pecuniary penalty, other than a fine, incurred under the provisions of section 45, 46, 47 or 48, or stay or compound any proceedings for recovery thereof and may also, after judgment, further mitigate or entirely remit such penalty.

Offence of making a false statement or representation for purpose of obtaining reduction of tax

50. Any person who, for the purpose of obtaining any reduction in tax for himself or any other person, knowingly and wilfully makes any false statement or false representation shall be guilty of an offence and liable on conviction therefor to imprisonment for a term of six months.

Penalty for offences by authorised and unauthorised persons

51.(1) Any person employed or authorised under this Act to perform any duty for the administration of this Act who—

- (a) without reasonable excuse demands from any person an amount in excess of the tax legally due;
- (b) withholds for his own use or otherwise any portion of the amount of tax collected;
- (c) knowingly renders any false return, whether verbally or in writing, of the amounts collected or received by him; or
- (d) defrauds any person, embezzles any money or otherwise uses his position so as to deal wrongfully either with the Commissioner or any other individual,

shall be guilty of an offence.

(2) Any person who, not being authorised under this Act so to do, collects or attempts to collect any tax under this Act shall be guilty of an offence.

(3) A person shall, on conviction for an offence under subsections (1) or (2), be liable to a fine of five hundred dollars or to imprisonment for a term of three years or to both such fine and imprisonment.

Before whom proceedings may be brought

52. All proceedings under this Part or under subsection (1) of section 4 may be instituted before a magistrate of District A and the provisions of section 115 of the *Magistrates Jurisdiction and Procedure Act*, Cap. 116 relating to the time within which an information shall be laid shall not apply to such proceedings.

Tax to be payable notwithstanding any proceedings for offences

53. The institution of proceedings for, or the imposition of, a fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any tax for which he is or may become liable.

PART XI

MISCELLANEOUS

Joint assessments

54.(1) Subject to subsection (2), where petroleum winning operations are carried on by two or more persons jointly, the tax in respect thereof shall be computed and stated jointly and in one sum and a joint assessment shall be made in the partnership name.

(2) Where the joint operations are carried on by two or more companies or firms of partners, each such company or firm may, on disclosing to the Commissioner the terms of any agreement made between them as to their respective shares of the chargeable profits arising from such joint operations and as to the proportionate amount that each shall bear of any qualifying capital expenditure, other capital expenditure, losses or other expenses and outgoings that may be incurred by them in respect of such joint operations, make a separate return of their rateable proportion of the chargeable profits derived from such joint operations and may make all elections permitted by this Act independently of one another.

(3) Where any separate returns are made pursuant to subsection (2), the Commissioner shall separately assess each company or firm carrying on the joint operations and each such company or firm so assessed shall be liable for payment of so much of the tax as may be assessed upon it.

Changes of proprietor

55.(1) Where at any time a change occurs in a partnership of persons engaged in petroleum winning operations by reason of retirement or death or the dissolution of the partnership as to one or more of the partners or the admission of a new partner in such circumstances that one or more of the persons who until that time were engaged in those operations continue to be engaged therein (or a person who until that time was engaged in any petroleum winning operations on his own account continues to be engaged in them but as a partner in a partnership), then notwithstanding the change the partnership shall not be treated as discontinued.

(2) Where at any time a concession holder succeeds to any petroleum winning operations which until that time were carried on by another person and the case is not one to which subsection (1) applies, the tax payable for all accounting periods by the concession holder succeeding as aforesaid shall be computed as if he had set up and engaged in the petroleum winning operations at that time and the tax payable for all accounting periods by the person who, until that time, carried on those operations shall be computed as if they had then been discontinued:

Provided that any period of time during which petroleum was exported by the person who, until the succession, carried on those operations and any amounts of petroleum exported by that person which, pursuant to the provisions contained in paragraphs (a) or (b) of the definition of the expression “effective date” in section 2, would be taken into account in determining the effective date of that person, shall be taken into account in determining the effective date of the concession holder succeeding as aforesaid.

(3) Notwithstanding section 55 (2), where on or before the operative date a person, by virtue of a merger, succeeds to petroleum winning operations that until that time were carried on by a concession holder then

- (a) notwithstanding the succession, the petroleum winning operations shall not be treated as discontinued;
- (b) the succeeding concession holder shall be entitled to or liable for any allowances, deductions or charges to which if the original concession holder had continued the petroleum winning operations he would be entitled to or liable for under Part III; and
- (c) the amount of any allowances, deductions or charges referred to in paragraph (b) shall be computed
 - (i) as if the succeeding concession holder had at all times been carrying on those operations; and
 - (ii) as if everything done to or by the original concession holder in the course of the petroleum winning operations had been done to or by the succeeding concession holder.

[1982-17]

(4) For the purposes of subsection (3) the expression “operative date” means 7th July, 1979.

[1982-41]

Rules

56.(1) The Commissioner may, from time to time, make rules for the following purposes

- (a) prescribing the form of any notice or return required under this Act and the particulars to be set forth therein;
- (b) providing, where there is no provision in this Act or no sufficient provision in respect of any matter or thing necessary to give effect to this Act, in what manner and form the deficiency shall be supplied;

- (c) making any provisions which may be convenient for the administration of this Act or which may be desirable or necessary in order to carry its objects into full effect.
- (2) All rules made under this Act shall be published in the *Official Gazette*.

Exemption from income tax, trade tax and rates

57.(1) Notwithstanding anything contained in the *Income Tax Act*, Cap. 73 all profits or gains arising or accruing to a concession holder engaged in petroleum winning operations for any accounting period and derived from those operations shall be exempt from income tax and land tax.

(2) Notwithstanding anything contained in the *Land Tax Act*, Cap. 78A, any lands, tenements or hereditaments of which a concession holder engaged in petroleum winning operations is for the purposes of the said Act the owner thereof and which are used by the concession holder solely and exclusively for the purposes of the petroleum winning operations engaged in by him shall not be deemed to be lands, tenements or hereditaments for the purposes of the said Act:

- (3) The provisions of subsection (2) shall not extend or be construed to extend
- (a) to any building or structure the whole of which is provided by the concession holder for occupation by or for the welfare of workers and the land upon which such building or structure is situate; or
 - (b) to any building the whole of which is used by the concession holder as an office and the land upon which such building is situate.