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DRAFT

PETROLEUM INCOME TAX ACT

B.E. ....

Whereas it is deemed proper to enact a petroleum income tax law.

Now, therefore...

Section 1. This Act is called "Petroleum Income Tax Act, B.E. ...."

Section 2. This Act shall come into force on the day following the date of its publication in the Government Gazette.

Section 3. Those provisions of all other laws, regulations and rules in so far as they are stipulated in this Act or are contrary to or inconsistent with the provisions of this Act shall be replaced by the provisions of this Act.

DIVISION 1

General Provisions

Section 4. In this Act,

"Petroleum" means petroleum as defined in the Petroleum Law which is produced in Thailand.

"Crude Oil" means crude oil as defined in the Petroleum Law.

"Exported Crude Oil" means crude oil which the company holding a concession or having a joint interest therein exports or sells to another person for export, and includes that part of crude oil refined in Thailand which is treated as exported crude oil under the Petroleum Law.

"Petroleum business" means petroleum operation under the Petroleum Law and includes transfer of all or any of the properties or rights in connection within such business, whether or not the transfer is made in the usual course of business and also includes any activity incidental to such business or transfer.

"Income" means money, properties or any other benefits obtained which are ascertainable in terms of money, and includes taxes and duties paid by other persons for the benefits of the taxpayers.

"Thailand" means Thailand under the Petroleum Law.

"Concession" means a concession under the Petroleum Law.

"Sale" means sale under the Petroleum Law.

"Disposal" means delivering crude oil to a refinery or storage place for the purpose of refining by the company, appropriation of petroleum which is subject to royalty for use in any activity of the company other than for sale, or transfer of petroleum which is subject to royalty without consideration.

"Tax reference price" means the posted price as defined in the Petroleum Law minus discounts, if any.

"Market price" means price in an open market, or, in the absence of such price, means a price which would be charged between persons acting independently without relationships in capital or management.

"Royalty" means royalty under the Petroleum Law.

"Company" means company under the Petroleum Law which

(1) holds a concession or has a joint interest therein; or

(2) purchases crude oil from the company under (1) all of which is intended for export.

"Director-General" means the Director-General of the Revenue Department.

"Minister" means the Minister who has care and charge of this Act.

Section 5. If a person who is required to comply with any time limit prescribed by this Act is prevented from compliance by necessary circumstances, the Director-General with the approval of the Minister has the power to give an order for extension or postponement of the time limit to suit the circumstances.

The order under the first paragraph shall be given within fifteen days after receiving a request for extension or postponement, failing which the time limit shall be deemed extended or postponed as requested.

Section 6. Wherever it is necessary for the purpose of administration of taxes under this Act, the Director-General has the power to issue a written order authorizing an officer to search for or seize books of account, document or other evidences connected or reasonably believed by the Director-General to be connected with taxes payable.

Any search or seizure under the first paragraph shall be conducted between sunrise and sunset or during the working hours of the person subjected to search and seizure; Provided that the search or seizure which is begun but not completed during such period may be continued beyond such period, and in the cases of extreme emergency, the Director-General may by order authorize search or seizure to be conducted at any time.

Section 7. Where it is necessary for the purpose of administration of taxes, the Director-General has the power to issue a written order requiring a company to produce books of account or records, to render statements or to give any information connected with or reasonably believed by the Director-General to be connected with petroleum business.

The order issued under the first paragraph may require compliance prior to the first accounting period of the company.

Section 8. Accounts and supporting records and documents in connection with the company's petroleum business shall be kept in Thai and in the Thai currency: Provided that the Director-General may, upon the company's request, allow them to be kept in a foreign language or in a foreign currency.

Section 9. If books of account, records, statements or other documents connected with or reasonably believed by the Director-General or the assessment officer to be connected with the taxes under this Act are in a foreign language, the Director-General or the assessment officer may order the persons responsible for payment of taxes under this Act to have their Thai translation prepared within a reasonable period of time.

Section 10. Summonses, notices of assessment and other documents addressed to any person for the purpose of execution of this Act may be delivered personally between sunrise and sunset or during working hours of the addressee, or by registered post.

If delivery cannot be made in the manners prescribed under the first paragraph, such summonses, notices and documents may be delivered by posting them at a conspicuous spot on the door of the house office, domicile or place of residence of the addressee, or by advertising their summary in newspapers.

If the summonses, notices or documents have been delivered in the manner prescribed under the second paragraph and at least three days have elapsed, they shall be deemed received.

Section 11. Any officer who, by virtue of an official position, acquires information relating to the business of a taxpayer or of any other persons concerned shall not divulge or otherwise communicate such information to any person, unless authorized to do so by law.

Section 12. A limited company or any other juristic person of a status equivalent to a limited company, whether incorporated under the Thai or foreign law, which is subject to tax under this Act shall be exempt from

(1) taxes and duties imposed by the Revenue Code and

(2) taxes and duties imposed by any other laws except the Petroleum Law.

Provided that such taxes and duties are based on net profits or income includible in computing net profits, or on income subject to tax under this Act.+

Section 13. A limited company or any other juristic person of a status equivalent to a limited company, whether incorporated under the Thai or foreign law, shall be exempt from

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+ See the relevant section of the Petroleum Act for exemptions from taxes other than income taxes.

(1) taxes and duties imposed by the Revenue Code and

(2) taxes and duties imposed by any other laws.

Provided that such taxes and duties are based on dividends or shares of profit paid out of the net profits or income subject to tax under this Act.

Section 14. Taxes payable or remittable under this Act which are not paid when due for payment or remittance shall be treated as tax arrears.

For the purpose of recovering tax arrears, the provisions of the Revenue Code relating to procedures for recovering arrears of taxes and duties shall apply.

Section 15. Reduction or exemption of the tax under this Act shall be granted to persons in accordance with agreements on avoidance of double taxation concluded between the Thai Government and foreign Governments.

Section 16. The Director-General shall have the power to -

(1) prescribe tax returns and other forms,

(2) appoint assessment officers and other officers,

(3) prescribe rules and regulations requiring taxpayers or their representatives to keep accounts and records, render statement or do whatever acts that may be necessary for the collection and payment of taxes,

Appointments under (2) and prescriptions under (3) shall be published in the Government Gazette.

Section 17. The Director-General may by a written instrument delegate his authorities under Sections 5, 6, 7, 8, 9, 26 (1), and 77 to a director or chief of a division in the Revenue Department or to a Regional Revenue Officer.

Section 18. The Minister shall have the power to prescribe discounts on the posted price under the Petroleum Law at rates not exceeding seven per cent for a period not exceeding nine years from the date when a company begins production of petroleum.

Rules and method for prescribing discounts under the first paragraph shall be laid down by Ministerial Regulation.

Section 19. The Minister of Finance shall have care and charge of this Act and shall have the power to issue Ministerial Regulations for the purpose of execution of this Act.

Ministerial Regulations shall be effective upon publication in the Government Gazette.

DIVISION 2

Income Tax and Computation of Net Profits

Section 20. A company shall pay income tax in respect of each accounting period at the rate of 50 per cent of net profits derived from the petroleum business.

Section 21. In the case where there is a transfer of petroleum business, if the transferee company pays out income in the nature of royalty, annuity or any other recurring income in consequence of such transfer, and the total amount of such income is not definitely ascertainable, the person receiving such income shall pay income tax at the rate of 50 per cent of income after deduction of cost allowed under Section 33.

Section 22. In computing net profits, the following items shall be included as revenue:

(1) Gross income from sale of petroleum,

(2) Value of petroleum disposed of,

(3) Value of petroleum delivered to the Government as payment of royalty in kind,

(4) Gross income arising from a transfer of any property or right in connection with petroleum business, if the total amount of such gross income are definitely ascertainable,

(5) Any other income arising from carrying on petroleum business.

In the case of transfer of a concession under Section ~~48~~ 50 of the Petroleum Act, B.E. ...., the gross income arising from such transfer for the purpose of (4) shall be taken at the latest book value of the transferor company on the date of transfer.

Section 23. There shall be deducted from revenue under Section 22 all ordinary and necessary expenses.

Section 24. Subject to the provisions of Sections 25 and 26, ordinary and necessary expenses include only those items which the company can prove to be ordinary and necessary, in a reasonable amount, and only to the extent expended for the purpose of its petroleum business; and under such limitations, ordinary and necessary expenses, whether incurred within or outside Thailand, include:

(1) Rent or other considerations for hire of property.

(2) Labour cost, service charges, cost of materials consumed and other similar expenses paid or incurred for the purpose of exploration or production drilling.+

(3) Entertainment expenses.

(4) Bad debts written off.

(5) Contributions to a provident or pension fund.

(6) Allowances for capital expenditure.

+ See Section 26 (7) of this Act for option to capitalize such expenses.

(7) Royalty, whether in cash or in kind, for exported crude oil.

(8) Head office expenses which are reasonably allocable to the petroleum business of the company.

(9) Cost of property or right, after deduction of capital allowance, in the case of revenue under Section 22 (4).

Section 25. The items which shall not be treated as ordinary and necessary expenses include:

(1) Capital expenditures, or expenditures laid out for making addition to, or alteration, extension or improvement of properties.

"Capital expenditure" under the first paragraph means an expenditure laid out for the purpose of acquiring an asset or advantages, whether direct or indirect, if such assets or advantages benefits the business for a period longer than one accounting period. It includes all losses and ordinary and necessary expenditures incurred or paid prior to the first accounting period under Section 26 (1), second paragraph.

(2) An expenditure of a personal nature, a gift or donation.

(3) Losses which are recoverable through insurance or any contract of indemnity.

(4) An expenditure made in consideration for the company's capital or assets.

(5) Any reserve or contribution to any reserve fund except as provided in Section 24 (5).

(6) Income tax, penalty and surcharge payable under this Act or to a foreign country.

(7) An expenditure paid or incurred for the purpose of such business or acquiring such income that is not subject to tax under this Act.

(8) Any expenditure, if the company cannot prove the identity of the recipient.

(9) Royalty for petroleum, except the royalty specified in Section 24 (7).

(10) Interest.

(11) Surface reservation fees under the Petroleum Law.

(12) A fine for criminal offences.

Section 26. Computation of revenue, expenses and net profits under this Division shall be subject to the following:

(1) Net profits shall be computed on the basis of an accounting period.

The first accounting period shall begin on the day on which the company makes the first sale or disposal of petroleum, which is subject to royalty: Provided that in the case where the company with the Director-General's approval elects to treat as the beginning date of the first accounting period any day, prior to the date of the first sale or disposal, in the month in which the company makes the first sale or disposal of such petroleum, it shall begin on the date so elected. Any subsequent accounting period shall begin on the closing date of a previous accounting period.

An accounting period shall be a period of twelve months, except that such period may be shorter in the following cases:

(a) The company may take any date as the closing date of the first accounting period.

(b) If the company ceases to carry on petroleum business, the date of cessation shall be the closing date of the accounting period.

(c) The company changes the closing date of an accounting with the approval of the Director-General.

If a company transfers any rights under a concession prior to the beginning date of the first accounting period under the second paragraph, the date of transfer shall be treated as the beginning and closing dates of the accounting period for the purpose of computing net profits arising from the transfer of such rights. No accounting period shall be deemed to exist between such closing date and the beginning date of the accounting period under the second paragraph.

(2) Subject to the provisions of this Division, accounting methods, rules and practices for the purpose of determining revenue, expenses and net profits of a company shall be consistent with the accounting methods, rules and practices which are sound and usual in the petroleum industry.

(3) Proceeds of sale of petroleum under Section 22 (1) shall be based on the same realized price as taken for the purpose of calculating royalty under the Petroleum Law, but no adjustment for the difference in transportation costs under that law shall be taken into consideration: Provided that, in the case of exported crude oil, if the realized price is lower than the tax reference price, proceeds of sale shall be based on the tax reference price.

(4) Value of petroleum under Section 22 (2) shall be based on the same realized price as taken for the purpose of calculating royalty under the Petroleum Law, but no adjustment for the difference in transportation costs under that law shall be taken into consideration.

(5) Value of petroleum under Section 22 (3) shall be based on the same price as taken for the purpose of determining the value of petroleum delivered for payment of royalty in kind under the Petroleum Law.

(6) Capital allowances may be deducted only for such categories, at such rates, and under such conditions, as may be prescribed by Royal Decree.

(7) Labour cost, service charges, cost of materials consumed and other similar expenses paid or incurred for the purpose of exploration or production drilling may at the company's option be treated as capital expenditure laid out in the accounting period in which such expenses are paid or incurred.+

(8) Value of properties other than inventories of merchandise shall be carried at not more than actual cost. If the cost is in terms of a foreign currency, it shall be converted into the Thai currency in accordance with the method described in (10). Such value may be decreased by means of capital allowances under (6), but may not be decreased by revaluation; and it may be increased by revaluation only as provided by the Revenue Code.

(9) Value of inventories of merchandise at the end of an accounting period shall be carried at cost, or at cost or market price whichever is lower; and the value so determined shall be the value of such inventory brought forward to the next accounting period.

Any accounting method which is once adopted for ascertaining the cost under the first paragraph shall be consistently applied. Deviation therefrom may be made only with the approval of the Director-General.

(10) Currencies, debts or claims bearing value in terms of a foreign currency which are received or disposed of during an accounting period shall be valued in terms of the Thai currency at the rate at which the foreign currency is bought or sold.

In the absence of a purchase or sale of a foreign currency, such currency, debt or claim shall be valued at the monthly average rate of exchange prevailing in the month prior to the month of receipt or disposal, which rate shall be the average, as computed by the Bank of Thailand, of daily rates of exchange at which commercial banks buy or sell foreign currencies.

(11) Currencies, debts or claims bearing value in terms of a foreign currency, remaining on hand on the closing date of an accounting period, shall be valued in terms of the Thai currency at the latest average buying or selling rate, as the case may be, of commercial banks as computed by the Bank of Thailand.

(12) A bad debt may be written off only after reasonable action has been taken to collect the debt. Any bad debt which has been written off and is subsequently recovered shall be included as revenue of the accounting period in which it is recovered.

(13) Contributions to a provident or pension fund may be deducted as expense only to an extent not exceeding 10 per cent of the salary or wages received by employees during the accounting period, subject also to the following conditions:

(a) The fund is set aside exclusively for the benefit of employees.

(b) The fund is separately set aside in such a way that it is beyond the possession of the company

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+ See also Section 24 (2).

(c) The fund cannot be appropriated for any purpose other than for the benefit of the fund.

(d) Contributions to the fund are irrecoverable by the company, and

(e) Contributions to the fund are made in accordance with the obligation prescribed by a fund regulation in writing.

Section 27. The balance of revenue after deduction of ordinary and necessary expenses shall be annual gain or annual loss, as the case may be.

Section 28. In the case of an annual gain, there shall be deductible the following allowances:

(1) The annual loss of any one or more of the ten accounting periods prior to the current accounting period within the ten accounting periods.

If an annual loss has been taken as deduction in any accounting period, only the balance, if any, can be carried forward for deduction in a subsequent accounting periods within the ten accounting periods.

(2) The following donations to the extent not exceeding 1 per cent of the annual profit after deduction of the allowance under (1):

(a) Money donated to government-owned clinics and government-owned educational institutions.

(b) Money donated for public benefit to such public charity organizations or institutions, or such clinics and educational institutions other than those mentioned in (a), as may be prescribed by the Minister and published in the Government Gazette.

Section 29. In the case of transfer of a petroleum business, the transferee company shall, in respect of the accounting period in which the transfer takes place and subsequent accounting periods, carry over the balance of any annual loss of the transferor company for the purpose of allowance under Section 28 (1), as if no transfer of the petroleum business had taken place.

If the compensation paid by the transferee company to the transferor company is less than the sum of value of assets after deduction of capital allowance and the balance of the annual loss of the transferor company, but exceeds such value of assets, the balance of the annual loss which may be carried over by the transferee company shall be limited to the difference between such compensation and such value of assets. If balances of annual losses are brought forward from several previous accounting periods, the amount of such difference shall be allocated to each accounting period in proportion to the balance belonging to such period.

If the compensation under the second paragraph does not exceed to value of assets after deduction of capital allowances, the transferee company is not permitted to carry over any balance of an annual loss of the transferor company for the purpose of the allowance under Section 28 (1).

The provisions under the second and third paragraphs shall not apply in the case of transfer of a concession under Section 25 50 of the Petroleum Act, B.E. ....

Section 30. The balance of an annual gain after deduction of the allowances under Section 28 shall be net profits subject to income tax under Section 20.

Section 31. If there is any tax under Section 20 payable by the company in any accounting period, there may be taken as credit against such tax the royalty under Section 25 (9), but only in an amount not exceeding the tax.

For the purpose of credit under the first paragraph, royalty for any period under the Petroleum Law may be taken as credit only in the accounting period within which such period lies.

Section 32. In the case where a company holding concession or having a joint interest therein sells crude oil to a buyer company which purchases crude oil all of which is intended for export, if the buyer company pays tax under Section 20, the seller company may take such tax as credit against its own tax for the same accounting period, but only in an amount not exceeding the tax payable by the seller company.

If the buyer company pruchases crude oil at a price lower than the tax reference price and sells it at a price higher than the tax reference price, the credit that the seller may take under the first paragraph shall not exceed that part of the tax paid by the buyer company which is allocable to the difference between the tax reference price and the price at which the buyer company purchases crude oil.

If the buyer company purchase crude oil at the tax reference price or at a price higher than the tax reference price, the credit under the first paragraph is not allowed.

Section 33. Deduction of cost from income under Section 21 shall be limited to the balance of the annual loss under Section 28 (1) of the company which transferred petroleum business, and shall be subject to the rules, methods and conditions prescribed by Ministerial Regulations.

DIVISION 3

Income Returns

Section 34. Companies shall file income returns for each and every accounting period.

A company having joint interest in a concession shall file income returns only to the extent of the share of the revenue belonging to the company.

Section 35. Directors with the authority to act on behalf of a company shall be responsible for filing an income return required under this Division on behalf of the company.

In the case where a company formed under a foreign law and subject to tax under this Act has no director with the authority to act on behalf of the company present in Thailand, the person who acts on behalf of the company in connection with the income subject to tax shall be responsible for filing an income return on behalf of the company.

Section 36. In the case of amalgamation of companies, if the original companies have not filed income returns under Section 34, the company newly formed by the amalgamation shall be responsible for filing returns for the original companies.

Section 37. In the case of transfer of petroleum business, if the transferor company fails to file an income return within the time limit and the assessment officer has given notice of such failure to the transferee company, the transferee company shall file an income return on behalf of the transferor company.

Section 38. If a company ceases to carry on petroleum business, the persons responsible for filing a return on behalf of the company under Section 35 shall be responsible for filing an income return ; and if there is a liquidator the persons responsible for filing returns on behalf of the company under Section 35 and the liquidator shall be jointly responsible for filing an income return.

Section 39. Income returns shall be in the form prescribed by the Director-General.

The person responsible for filing an income return shall fill in all entries required in the returns and shall submit all supporting documents designated by the Director-General together with the returns.

Section 40. Income returns shall be filed to the officer at the place designated by the Director-General.

Section 41. Income returns shall be filed within five months from the closing date of each accounting period.

Income returns under Section 37 shall be filed within the period of time prescribed by the assessment officer: Provided that such period shall not be less than thirty days from the date of receiving a notice of the transferor company's failure to file an income return.

Income returns under Section 59 shall be filed within the period of time prescribed by the assessment officer.

DIVISION 4
Payment of Tax

Section 42. Tax chargeable under Section 20 shall be paid to the officer at the place designated by the Director-General.

The company may enter a request for payment of the tax under the first paragraph in any foreign currency. The Director-General, with the approval of the Minister, may at his discretion approve the request thereby allowing the tax to be paid in such foreign currency, according to such conditions and procedure as may be prescribed.

Section 43. If there is any tax payable, the company with the duty to file an income return under Division 3 shall pay the tax within five months from the closing date of the accounting period at the time of filing the income return.

In the case under Section 35, second paragraph, the person responsible for filing an income return shall be responsible jointly with the company formed under a foreign law for the payment of the tax.

Section 44. In the case where the assessment officer makes assessment under Division 6, the person liable for payment of tax shall pay the tax within thirty days from the date of receiving notice of assessment: Provided that, in the case of an assessment under Section 59, tax shall be paid within the time specified by the assessment officer.

DIVISION 5
Tax Withholding

Section 45. Companines paying income under Section 21 shall

(1) withhold tax on every occasion of paying income at the rate under Section 21,

(2) file tax-withholding returns, and

(3) remit the tax required to be withhold under (1).

Tax-withholding under (1) shall be in accordance with the rules, methods and conditions prescribed by Ministerial Regulations.

Section 46. Directors with the authority to act on behalf of a company shall file a tax-withholding return under this Division on behalf of the company.

In the case where a company formed under a foreign law and required to withhold tax has no directors with the authority to act on behalf of the company present in Thailand, the person who acts on behalf of the company in connection with the income described in Section 21, shall file a tax-withholding return on behalf of the company.

Section 47. In the case of amalgamation, if the company paying income under Section 21 fails to file a tax-withholding return, the company formed by the amalgamation shall be responsible for filing the tax-withholding return for the original company.

Section 48. In the case of transfer of petroleum business, if the transferor company fails to file a tax-withholding return within the time limit and the assessment officer has given notice of such failure to the transferee company, the transferee company shall file a tax-withholding return on behalf of the transferor company.

Section 49. If a company ceases to carry on petroleum business, the persons responsible for filing a return on behalf of the company under Section 46 shall be responsible for filing a tax withholding return; and if there is a liquidator, the persons responsible for filing a return on behalf of the company under Section 46 and the liquidator shall be jointly responsible for filing a tax-withholding return.

Section 50. Tax-withholding returns shall be in the form prescribed by the Director-General.

The person responsible for filing withholding returns shall fill in all entries required in the returns and shall submit all supporting documents designated by the Director-General together with the returns.

Section 51. Tax-withholding returns shall be filed within seven days from the date of paying income under Section 21.

Returns under Section 48 shall be filed within the period of time prescribed by the assessment officer: Provided that such period shall not be less than thirty days from the date of receiving notice of the transferor company's failure to file a tax-withholding return.

Returns under Section 59 shall be filed within the time prescribed by the assessment officer.

Section 52. The company with the duty to file a tax-withholding return shall remit tax within seven days from the date of paying income under Section 21 at the time of filing the tax-withholding return under Section 51.

In the case of Section 46, second paragraph, the person with the duty to file a tax-withholding return shall be responsible jointly with the company formed under a foreign law for remitting the tax.

Section 53. In the case where the assessment officer makes assessment under Division 6, the person with the duty to remit tax shall remit the tax within thirty days from the date of receiving notice of the assessment; Provided that, in the case of assessment under Section 59, tax shall be remitted within the time specified by the assessment officer.

Section 54. Filing of returns and remittance of tax under this Division shall be made to the officer at the place designated by the Director-General.

Section 55. The person with the duty to withhold tax who fails to withhold tax or withholds tax inaccurately shall be liable jointly with the person having income under Section 21 for payment of the tax.

If the person with the duty to withhold tax has withheld tax but fails to remit the tax, or remits the tax inaccurately, the person having income under Section 20 shall be discharged of liability for payment to the extent of the amount of tax withheld, and the person with duty to withhold tax shall be solely liable for payment of that amount.

DIVISION 6

Authority of the Assessment Officer

Section 56. The assessment officer has the power to assess tax, penalty and surcharge, if

(1) The person with the duty to file income returns fails to file such returns within the time specified by law.

(2) The person with the duty to file income returns files an income return which is inaccurate or includes errors which affect tax liability.

(3) A company or the person with the duty to file income returns fails to comply with a summons issued by the assessment officer or refuses to give answers to the questions put by an officer with the authority to investigate without justificable grounds, or is unable to produce records necessary for computing tax.

(4) A company fails to withhold tax, to file a tax-withholding return, or to remit tax, correctly in accordance with the provision of Division 5.

Section 57. For the purpose of executing the provision of Section 56, the assessment officer has the power to:

(1) Prepare an income return if no return has been filed, on the basis of evidence which is believed to be correct.

(2) Adjust any particular in the income return or in any document filed in the support of the return.

(3) Adjust the amounts of revenues and expenses of a company to arrive at the amounts which the company should have obtained or paid, had it carried on its business independently, but it had not because there existed control or relationship in the capital or management between the company and another company or person.

(4) Determine price or value of any property or of the business at market price on the date of transfer, if the property or business is transferred for no consideration or for a consideration less than the market price without justificable grounds.

(5) Determine net profits or income in accordance with his knowledge or judgement in the case of Section 56 (3).

Section 58. In excercising this authority under Section 56 or 57, the assessment officer shall have the power to:

(1) Issue a summons to the person responsible for filing an income return or a tax-withholding return and a witness for questioning;

(2) Issue an instruction requiring the person responsible for filing an income return or a tax-withholding return and a witness to give answers in writing, or to produce books of account, records, statements or any other relevant documents for examination;

Provided that a period of at least seven days from the date of receiving the summons or instruction shall be given for compliance.

Section 59. Wherever it is necessary for the purpose of protecting tax revenue, the assessment officer shall have the power to make an assessment, to require payment or remittance of tax and/or filing of an income return or a tax-withholding return, prior to the time limits prescribed by this Act.

Section 60. The assessment officer shall give notice of any assessment made to the company or the person liable to payment or remittance of tax. An appeal is allowed against the assessment: Provided that no appeal can be made against the assessment made under Section 56 (3)

In the case of an appeal under the first paragraph, the provisions of the Revenue Code governing appeals shall apply.

Section 61. Assessment by the assessment officer is subject to the following time limitations:

(1) Five years from the last day of the time limit for filing income returns under Section 41, first paragraph, the last day of the time limit for filing tax-withholding returns under Section 51, first paragraph, or the last day of the time limit as extended by the Director-General under Section 5, as the case may be: only the case where a company files a return within such time limit.

(2) Five years from the date on which a company files an income or tax withholding return, but not exceeding ten years from the last day of the time limit described in (1): only in the case where a company files a return after the last day of such time limit.

(3) Ten years from the last day of the time limit for filing an income return or a tax-withholding return: in the case where a company fails to file a return, or files a false return with a view to evading payment or remittance of tax, or files an income return or a tax-withholding return but excludes an amount exceeding 25 per cent of the revenue or remittance tax as reported in the return.

DIVISION 7

Penalty and Surcharge

Section 62. A company shall pay penalties in the cases and at the rates as follows:

(1) In the case of failure to file an income return within the time limit under Section 41, or within the time limit as extended or postponed under Section 5, the penalty shall be equal to the amount of tax.

(2) In the case of filing an income return which is inaccurate or includes errors resulting in tax deficiency, the penalty shall be 20 per cent of amount of tax additionally assessed.

(3) In the case of failure to withhold tax or to file a tax-withholding return within the time limit under Division 5, or filing an inaccurate tax-withholding return as a result of which tax remitted is less than the amount remittable, the penalty shall be 20 per cent of the total tax which is not withheld, or not reported or included in the return, as the case may be.

Section 63. Any company which fails to pay or remit tax within the time limit under Division 4 or 5, or pays or remits tax in an amount less than that which should have been paid or remitted shall pay a surcharge of 1 per cent per month, or fraction thereof, of the amount of tax unpaid, unremitted, or deficient, exclusive of the penalties under Section 64. Surcharge may not be computed in the manner of compound interest.

In case the Director-General gives an order for extension or postp. of the time limit for payment or remittance of tax under Section 5 and the tax is paid or remitted within the extended or postponed time limit, the surcharge under the first paragraph shall be reduced to 0.5 per cent per month or fraction thereof.

In all cases under the first and second paragraphs, surcharge shall accrue on the last day of the time limit for filing an income return under Section 41, first paragraph, or for filing a tax-withholding return under Section 51, first paragraph: Provided that, in the case of an assessment under Section 59, the surcharge accrues on the last day of the time limit prescribed by the assessment officer.

The surcharge may not exceed the amount of tax payable or remittable exclusive of penalty.

Section 64. Penalty and surcharge may be waived or reduced according to the rules and procedures prescribed by Ministerial Regulations.

Section 65. For the purpose of recovering payment of penalty and surcharge, all penalty and surcharge shall be treated as tax.

DIVISION 8

Punishment

Section 66. Whoever furnishing false information, makes false statement, gives false answers, produces false evidence, or does any act with a view to evading or attempting to evade payment or remittance of tax shall be punished with imprisonment of three months to seven years and a fine of three thousand Baht to two hundred thousand Baht.

Section 67. Whoever fails to file an income return or a tax-withholding return with a view to evading or attempting to evade payment or remittance of tax shall be punished with imprisonment not exceeding one month or a fine not exceeding one thousand Baht or both.

Section 68. Whoever fails to extend facility to or obstructs an officer in the course of performing his duty under Section 6 shall be punished with imprisonment not exceeding one month or a fine not exceeding one thousand Baht or both.

Section 69. Whoever fails to comply with the instructions of the Director-General under Section 7 shall be punished with imprisonment not exceeding six months or a fine not exceeding six thousand Baht or both.

Section 70. Whoever fails to comply with the instructions of the Director-General or the assessment officer under Section 9 shall be punished with imprisonment not exceeding one month or a fine not exceeding one thousand Baht or both.

Section 71. Any officer who violates Section 11 shall be punished with imprisonment not exceeding six months or a fine not exceeding six thousand Baht or both.

Section 72. Whoever fails to comply with the rules or regulations under Section 16 (3) shall be punished with imprisonment not exceeding one month or a fine not exceeding one thousand Baht or both.

Section 73. Whoever fails to withhold tax in pursuance of Section 45 shall be punished with a fine not exceeding two thousand Baht.

Section 74. Whoever withholds tax but by neglect fails to remit the tax in accordance with Division 5 shall be punished with imprisonment not exceeding six months or a fine not exceeding six thousand Baht or both.

Section 75. Whoever knowingly or wilfully fails to comply with the summons or instruction issued by the assessment officer under Section 58, or refuses to give answers when questioned by an officer who has the authority of conducting examination shall be punished with imprisonment not exceeding one month or a fine not exceeding one thousand Baht or both.

Section 76. In the case where a company commits an offence under this Act, the manager or the directors of that company or the persons responsible for the management of these affairs of that company which are relevant to the committing of the offence shall be liable to the punishment for such offence as prescribed in the relevant sections of the Act, except where it is proved that they took no part in the committing of the offence.

Section 77. The Director-General is authorized to compound, by fixing a fine only, any offence under Sections 67 through 70 and Sections 72 through 76, if he is of the opinion that the offender should not suffer imprisonment. If the offender pays the fine in the amount fixed by the Director-General within thirty days, the case shall be treated as concluded.

If the offender does not agree to pay the fine or agrees but fails to pay the fine within the time limit as above mentioned, prosecution shall be proceeded with.

Countersigned

Prime Minister

ROYAL DECREE
PRESCRIBING CATEGORIES, RATES AND CONDITIONS
FOR THE PURPOSE OF DEDUCTION OF CAPITAL ALLOWANCE
B.E. .....

....

Given on the ....Day of...............B.E...........
Being the ....Year of the Present Reign By
Royal Command of His Most Excellent Majesty King Bhumibol
Adulyadej, it is hereby proclaimed that -

Whereas it is deemed proper to prescribe categories, rates and conditions for the purpose of deduction of capital allowance;

Be it, enacted by the King's Most Excellent Majesty, in exercise of the power conferred by Section 153 of the Constitution of the Thai Kingdom B.E. 2511 and Section 25 (6) of the Petroleum Income Tax Act, B.E. .... a royal decree as follows:

Section 1. This Royal Decree is called the "Royal Decree Prescribing Categories, Rates and Conditions for the Purpose of Deduction of Capital Allowance"

Section 2. This Royal Decree shall come into force on the day following the date of its publication in the Government Gazette.

Section 3. In this Royal Decree,

"Cost Value" means actual cost of any property or advantage which constitutes capital expenditure.+

"Net Value" means cost value after deduction of the allowance under this Royal Decree.

Section 4. Subject to the provisions of Section 5 and 6, a company may deduct capital allowance at the percentage of cost value for the following categories of capital expenditure:

+ See Section 25 (1) of Petroleum Income Tax Act.

(1) Buildings

(a) Durable buildings — 5%
(b) Temporary buildings — 100%

(2) Aircraft and its accessories — 33⅓%

(3) Costs incurred in the acquisition of a concession; labour cost, service charges, cost of materials consumed and other similar expenses paid or incurred for the purpose of exploration or production drilling, excluding costs of acquiring tangible assets covered by 6 6 (a) — 10%

(4) Lease Rights

(a) If there is no written lease agreement or if the written lease agreement contains a clause permitting continual renewals — 10%

(b) If the written lease agreement contains no renewal clause, or if the renewal clause prescribes a definitely limited period — 100% divided by the sum of the number of years of the lease period and the renewal period, or 10%, whichever is the greater percentage

(5) Rights in process, formula, goodwill, trademark, business licence, patent, copyright or any other right

(a) If period of use is not limited — 10%

(b) If period of use is limited — 100% divided by number of years of use

(6) Capital expenditure other than (1) through (5) and other than land

(a) Capital expenditure laid out for the purpose of acquiring tangible assets — 20%

(b) Capital expenditure not described in (a) — 10%

In the case of a capital expenditure laid out for the purpose of acquiring a tangible asset, if a company adopts for the purpose of capital allowance an accounting method according to which the rates of capital allowance varies from year to year during the useful life of an asset, the company may in some years deduct capital allowance according to such method in excess of the rates above prescribed: Provided that the number of years of the useful life of the asset for this purpose shall not be less than 100 divided by the above-prescribed percentage points.

Section 5. Deduction of capital allowance under Section 4 shall be subject to the following conditions:

(1) Capital expenditure may be taken for deduction of capital allowance only in so far as such expenditure is not contrary to the provision of Sections 25 (2) through (12) and 26 of the Petroleum Income Tax Act B.E..............

(2) Capital expenditure laid out prior to the first accounting period of a company shall be taken for the purpose of capital allowance as if such expenditure were laid out in the first accounting period.

(3) In the case of transfer of a petroleum business, the transferee company shall carry the net value of the transferor company for the purpose of capital allowance as if no transfer of petroleum business had taken place: Provided that

(a) If the compensation paid by the transferee company to the transferor company is less than the net value of the transferor company, the transferee company may carry the net value only in an amount equal to such compensation. If there are several items of capital expenditure, the compensation shall be apportioned according to the net value of each such item.

(b) If the compensation paid by the transferee company to the transferor company exceeds the sum of the net value and the balance of annual losses of the transferor company, the transferee company shall treat the excess as capital expenditure under Section 4 (6) (b).

The provisions of (a) and (b) shall not apply in the case of transfer of a concession under Section 46 of the Petroleum Act, B.E...............

(4) The rates of capital allowance under Section 4 are for an accounting period of full twelve months' duration. If any accounting period is less than twelve months or if a capital expenditure is laid out during an accounting period, the capital allowance shall be reduced to a fraction of which the denominator shall be twelve and the numerator shall be the number of months in the accounting period or the number of months from the month in which the capital expenditure is laid out, as the case may be. For this purpose, a fraction of a month shall be treated as one month.

Section 6. For the purpose of capital allowance under this Royal Decree, a company may adopt any accounting method which is sound and usual in the petroleum industry, and may adopt any rate, not higher than the applicable rate under Section 4, for deduction in its own accounts. But once any method and rate have been adopted, they shall be applied consistently, and deviation therefrom may be made only with the approval of the Director-General.

In case the rates of capital allowance adopted by a company in its own account is lower than that prescribed in Section 4, capital allowance may be deducted only at the rate adopted by the company.

Section 7. The Minister of Finance shall have care and charge of this Royal Decree.

Countersigned

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Prime-Minister

DRAFT

MINISTERIAL REGULATION

(B.E. .....)

Issued under the Petroleum Income Tax Act, B.E.........

By virtue of Sections 4 and 18 of the Petroleum Income tax Act, B.E.............., the Minister of Finance hereby issues a Ministerial Regulation, as follows:

1. Discounts, in respect of each exploration block, for the purposes of calculating tax reference price for each year in the period of the first nine years beginning from the date of beginning production under Section 41 and 42 of the Petroleum Act, B.E...., from that block shall be as follows:

	Percentage of posted prices
1st through 4th year	7
5th through 7th year	5
8th through 9th year	3

2. In the case where the term of the concession in regard to production is allowed extension under Section ~~24~~ 25 of the Petroleum Act, B.E. ...., if the extension occurs during any period under paragraph 1, that period under paragraph 1 shall also be extended by the time equal to the first-mentioned extension.

Given on the....Day of.......B.E........

Minister of Finance