

## NEWSLETTER OIL&GAS MLGTS LEGAL CIRCLE

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### ANGOLA | NEW LEGAL FRAMEWORK APPLICABLE TO MARGINAL FIELDS

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Presidential Legislative Decree no. 6/18 was published in the official gazette (*Diário da República*) on 18 May 2018 (PLD 6/18), and provides for the new legal framework applicable to the development of marginal fields, thereby revoking the former statute on this matter – Legislative Presidential Decree no. 2/16, of 13 June 2016.

PLD 6/18 preserves most elements of the concept of a marginal field originally set out in the previous framework, although amending the rules applicable to the exploitation of these reserves, in particular taxation, albeit it preserved the principles of tolerance and contractual flexibility which were also a structural element of the former framework which was now further simplified.

One of the criteria for a reserve to qualify as a marginal field continues to be its internal rate of return (IRR) after tax applicable to the relevant concession, but it has increased the minimum qualifying IRR from 10% to 15%.

PLD 6/18 (similarly to what happened under the preceding framework) determines that the contractual and tax terms applicable to qualified marginal fields may be adjusted as a measure to promote their development. For these purposes, the Operator must request the National Concessionaire that a

certain area is to be qualified as a “Marginal Discovery”. In turn, the National Concessionaire will submit the proposal to the competent Ministry and will instruct the proposal with a technical opinion concerning the possibility of subjecting the intended discovery to the Marginal Fields Framework.

The procedure, similarly to what occurred under the previous framework, is quite burdensome from a bureaucratic and administrative perspective and the request has to be instructed with technical and financial support elements as well as an Economic Feasibility Assessment. The time periods prescribed for their review by the National Concessionaire and subsequently the Petroleum Ministry remain the same, *i.e.*, 60 and 45 working days respectively. International Oil Companies (IOCs) also have to observe a mandatory time period for the issuance of the Marginal Discovery Declaration, however, this time period has been extended from 30 business days to 12 months after the request being approved and the Operator presenting the General Development and Production Plan to the relevant Ministry – the consequence of not observing such time period is that such reserve immediately reverts to the State.

Concerning the new tax regime applicable to marginal fields, the **petroleum production tax (royalty)** and **income tax** on the following granting instruments: joint ventures, risk service agreements and production sharing agreements were simplified and reformed, with their respective rates fixed at 10% and 25% respectively. The sliding-scale system provided for in the previous regime was therefore abolished. Further on simplification, the **investment premium** for which the preceding statute also established a progressive system was now fixed at **20%** of the amounts invested in each tax year, which may be deductible from taxable income in accordance with the Law on the Taxation of Petroleum Activities approved by Law no. 13/04 of 24 December 2004 (Law 13/04).

Lastly, PLD 6/18 also establishes an additional tax incentive for the exploration of marginal fields, providing for a production premium mechanism – an incentive included in the Law 13/04 not applicable to marginal fields under the former statute. Thus, the statute currently in force provides for a production premium indexed to the IRR of each reserve. As a result, IOCs will be able to deduct such production premium from their taxable income in accordance with PLD 6/18.

## ANGOLA | LEGAL FRAMEWORK ON ADDITIONAL RESEARCH ACTIVITIES IN PETROLEUM DEVELOPMENT AREAS

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Presidential Legislative Decree No. 5/18, of 18 May (PLD 5/18) published in the Official Gazette (*Diário da República*), establishes the Legal Framework on Additional Research Activities in Petroleum Concession Development Areas, revoking the previous regime which had been approved by Presidential Decree No. 211/15, of 2 December.

PLD 5/18 intends to promote the development of additional petroleum resources, aiming to maximize the geological potential of the development areas in existing petroleum concessions.

PLD 5/18 applies to research activities carried out in areas in which it is possible to exploit additional resources, thereby amounting to a supplementary legal framework, adding to the provisions of the General Framework on Petroleum Activities.

If the additional resources discovered are not economically viable under the terms of the applicable granting instrument (Production Sharing Agreements, Joint Ventures or Risk Service Agreements), the National Concessionaire and the Contractor Group may, by agreement, use their best efforts to explore these additional resources. In addition, if discoveries are made outside the additional area, the existing development area may be redefined to include all the resources discovered, provided such resources are not covered by the area of another contract.

PLD 5/18 also amended the rules on cost-recovery and cost-deduction of costs incurred in additional research. In that regard, that statute provides for two different alternatives:

- a) If new resources are discovered – all expenses incurred in such additional activities are classified as recoverable costs from existing and/or future production under the respective contract; and
- b) If there is no such finding for the purposes of recovering expenses incurred in additional exploration, the National Concessionaire and the Contractor Group shall, by agreement, work towards ensuring that such costs are recovered.

Lastly, in addition to removing the obligation on the payment of different contributions (premium and bonuses), PLD 5/18 also eliminated the minimum level of 30% of profit oil obtained in the exploitation of additional resources received by the National Concessionaire.

This Presidential Legislative Decree entered into force on 18 May 2018.

This Legal Alert does not cover all aspects of the regime provided for in PLD 5/18 and is intended to highlight only the most relevant.

## ANGOLA | LEGAL AND TAX FRAMEWORK APPLICABLE TO THE EXPLORATION OF NATURAL GAS

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On 18 May 2018, Presidential Legislative Decree no. 7/18, of 18 May, came into force (PLD 7/18), setting out the Legal and Tax Framework Applicable to the Surveying, Exploration, Assessment, Development, Production and Sale of Natural Gas in Angola. The statute aims to promote the exploration of natural gas in the country as well as the development of related industries.

### **i. Scope**

PLD 7/18 applies to Petroleum Investment Companies carrying out any of the following activities: surveying, exploration, assessment, development, production or sale of natural gas in the country or in any territory or area within the Angolan jurisdiction.

For these purposes, the notion of Petroleum Investment Companies includes any Angolan or foreign company which enters into an agreement with the National Concessionaire under any of the legal forms provided for in the Petroleum Activities Law, namely: incorporated company (*sociedade comercial*); unincorporated joint venture (*contrato de consórcio*) or production sharing agreement.

Rights granted under existing oil concessions and relevant agreements prior to the entry into force of the statute, related to natural gas, will not be affected by the new framework. However, on a case-by-case basis and where necessary or appropriate, the parties may, by Presidential Decree, amend the terms of their agreements for the purposes of adjusting the terms and conditions to the legal framework of PLD 7/18.

### **ii. Legal Framework**

Petroleum Investment Companies have the right, under agreed terms and conditions, on a case-by-case basis, with the National Concessionaire – via a new Agreement or an addendum to the existing one under the petroleum concession applicable –, to:

- Explore, survey, assess, develop, produce and sell natural gas in the internal market and abroad.

- Freely and cost-free use the natural gas produced in their own petroleum operations, albeit, if the IOCs do not intend to use nor sell such natural gas which exceeds the need of their concession, should make it available to the National Concessionaire, free of charge, at a delivery point to be determined.

One of the positive reforms introduced by PLD 7/18 to the production of natural gas is the possibility of establishing, in the applicable concession laws and instruments, for longer terms than those usually determined for oil exploration. Therefore, it is possible to extend the time periods for:

- Exploration term;
- Production term;
- Filing the commercial discovery notice;
- Drafting the General Development and Production Plan; and
- Beginning of production after the commercial discovery declaration.

On another positive note, PLD 7/18 provides for the possibility of withholding the development of a given area where natural gas has been found (for an additional period not exceeding 5 years) after the Commercial Discovery Declaration, if:

- a) Such possibility is included in the concession instrument or in the applicable agreement;
- b) No technical, economic and commercial conditions are met for issuing the commercial discovery declaration right away; and
- c) The relevant reserve has potential to become commercially viable.

### iii. Tax Regime

The Petroleum Investment Companies which carry out natural gas exploration activities are subject to the taxes established in the Petroleum Activities Law except for the Petroleum Transaction Tax (regardless of the applicable contractual regime).

The tax rates applicable to the Petroleum Investment Companies are as follows:

- **5% production tax (royalty);**
- **25% income tax**, except for non-associated natural gas projects in which the volume of certified reserves, up to the approval of the General Development and Production Plan, is equal to or less than 2 TCF, to which a tax of 15% applies. For these purposes, non-associated gas obtained from different fields but subject to a common development agreement is deemed to be part of the same project.

To the calculation of **gross petroleum income**, subject to 25%, or sometimes, 15% tax, **the following are deductible**:

- Costs incurred with the development and the production of associated natural gas (natural gas combined with crude oil, including the gas which covers and is joined with the crude oil), as, for instance, the costs related with the production and delivery of the excess associated natural gas, at a delivery point determined by the National Concessionaire, including the construction of the pipeline.
- All costs incurred in exploration activities carried out by the Petroleum Investment Companies in an oil concession or development area, which results in the finding of a commercially viable discovery of non-associated gas.

Liquids produced from non-associated gas are subject to the same tax regime of natural gas.

Lastly, whenever the economic factors behind a given exploration activity so require, tax benefits may be granted, as, for instance, exemption and reduction of taxes or an amendment may be made to the terms of the applicable petroleum income tax.



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