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Tax implications for the Guyana oil & gas sector

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1. Introduction

In this memo the oil gas sector in Guyana is discussed. For companies operating in the Guyana oil & gas sector the following laws are relevant.

1. Maritime Zones Act.
2. Petroleum Act.
3. Petroleum (Production) Act.
4. Petroleum (Exploration and Production) Act.
5. Income Tax Act ("ITA").
6. Corporation Tax Act ("CTA").
7. Customs Act.
8. VAT Act.

In this memo, we will only discuss the applicable taxes. The following taxes might apply to the oil and gas sector.

1. Corporation tax.
2. Capital gains tax.
3. Various withholding taxes.
4. VAT.
5. Income tax (PAYE).
6. Property tax.

Entities engaged in petroleum activities would normally be taxed at a rate of 25% corporation tax as a non-commercial company. Contractors and subcontractors working in the Guyana petroleum sector would also be subject to a rate of 25% corporation tax.

Companies engaged in petroleum operations are normally governed by the Petroleum (Exploration and Production) Act, the CTA, the ITA and the terms of any Petroleum Agreement. The government entity responsible for collecting taxes is referred to as Guyana Revenue Servies (GRA).

An entity engaged in the business of exploring for and winning of petroleum must do so under a prospecting and/or production license as well as the terms of any applicable petroleum agreement. Special tax provisions can apply to petroleum agreements.

2. Corporation Tax

Corporation tax system

The general tax year is the calendar year for the corporation tax. Other accounting periods may be allowed upon request. Tax returns must be filed electronically through eServices, where supporting documents can be uploaded as well.

Audited financial statements need to be included with the return according to Article 154 of the Companies Act 1991. In case the financial statements are unaudited, the corporation tax return will be deemed to be incomplete pending the submission of the audited financial statements.

The due date for the corporation tax return is 30 April following the book year. Corporation advance taxes are due each quarter on the 15th of March, 15th of June, 15th of September, and 15th of December. These installments are based on the information from the prior year, but the GRA may require a company to calculate the payments based on estimated income from that year. The balance of the corporation tax is payable at the moment of filing the return.

Expenses that are incurred with the production of income are deductible unless certain restrictions apply. Head office costs – for example – are not deductible in excess of 1% of sales or gross income.

The following rates apply to the corporation tax:

- 45% for telephone companies.
- 40% for commercial companies other than a telephone company.
- 25% of the chargeable profits of any other company.
- 25%/40% for companies that are both non-commercial and commercial.
- 25% for small businesses engaged in manufacturing and construction services (must be registered with the small business bureau).

If a company is engaged in both commercial and non-commercial activities a dual rate of 25% and 40% will apply. A commercial company is a company that derives at least 75% of its gross income from goods not manufactured by it or that is engaged in telecommunication, banking, or insurance. Any company that does not fall within the definition of commercial companies would be regarded as a non-commercial company, including manufacturers and service companies.

Entities engaged in petroleum activities would normally be taxed at a rate of 25% as a non-commercial company.

Interest received on bank deposits held at financial institutions in Guyana form taxable income. Dividends received from non-resident companies are also taxable. Dividends received from resident companies are tax exempt.

Royalties

A production and exploration licensee must pay a royalty fee stipulated in the license and production agreement. The royalty is deductible for corporation tax purposes.

Petroleum capital allowances

A petroleum capital allowance may be claimed that allows a deduction at a rate of 20% of the petroleum capital expenditure on a straight-line basis. The petroleum capital allowance is applicable as of the year of commencement and every subsequent year of assessment until the aggregate sum of the petroleum capital expenditure incurred by the company engaged in the petroleum operations ("assessee") in the years preceding the year of commencement is completely recouped. The assessee may elect a lower percentage as petroleum capital allowance.

Costs incurred in searching for and discovering petroleum, acquisition of a petroleum license, the provision of machinery and costs incurred in preparing a site for petroleum production can be considered as examples of costs that can be considered as petroleum capital expenditures.

Interest payable on capital used to obtain income is deductible to arrive at the chargeable income for corporation tax purposes.

Group Taxation and Transfer Pricing

There are no provisions for group taxation (fiscal unity), all companies are taxed separately.

There is no specific transfer pricing legislation or CFC rules, but the CTA contains general anti-avoidance provisions and the GRA monitors the "at arm's length" principle for intra-group transactions.

Losses

Losses can be carried forward indefinitely. No carry back of losses is allowed. The set-off shall not be allowed to an extent which will reduce the tax payable for any year of assessment to less than 50% of the amount which would have been payable had the set-off not been allowed.

Incentives

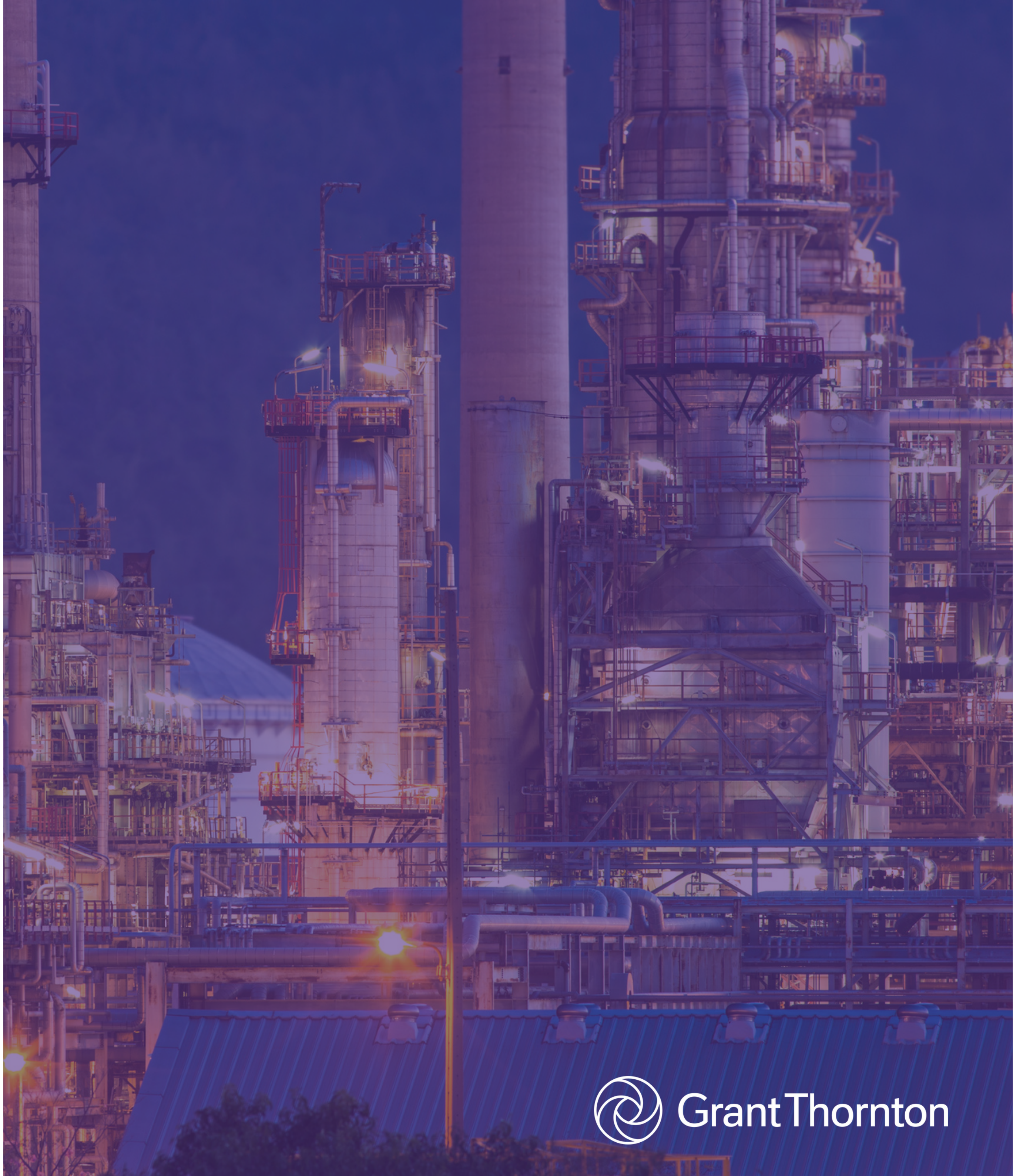
No specific incentives apply for the petroleum sector.

Minimum Corporation Tax (MCT)

Commercial companies (other than insurance companies) are subject to tax at the rate of 40% of chargeable profits or 2% MCT of turnover (whichever is higher). Excess payments of MCT over tax against a normal rate may be carried forward to offset corporation tax payable in the future years, but they may not reduce tax payable in any year to less than 2% turnover.

3. Capital gains tax

Capital gains tax is imposed at the rate of 20%. Capital gains tax is due on the net chargeable gains derived from the disposal of capital assets. If the disposal of an asset takes place within 12 months of its acquisition the gain is treated as ordinary income and subject to corporate tax at the applicable rate. Capital gains losses can be offset for a period of 24 years.



4. Withholding taxes

The following withholding taxes apply

Dividends and distributions to non-residents................................20%
Branch profits remittance..20%
Payments to non-resident contractors (advance corporation tax)..10%

Payments to non-residents

Interest..20%
Royalties..20%
Rents..20%
Management charges or charges for personal services and technical managerial skills...20%
Premiums, commissions, fees or licenses.....................................20%
Discounts, annuities or other annual or periodic payments...20%
Such other payments as may, from time to time be prescribed...20%

Guyana has Tax Treaties with Canada and the United Kingdom. In addition, a multi-lateral arrangement has been entered into with the members of the CARICOM. Under the tax treaties with Canada and the United Kingdom and the CARICOM treaty the withholding tax percentages are as follows.

Payment	Non-treaty	Canada
Royalty	20%	10%
Interest	20%	20%
Dividend	20%	15%

Payment	United Kingdom	Caricom
Royalty	10%	15%
Interest	15%	15%
Dividend	10% or 15%	0%

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5. Foreign exchange controls

No foreign exchange controls apply in Guyana, with some exceptions. For example, the permission of the Minister of Finance must be obtained for a person to lend or borrow in foreign currency in Guyana. Profits may be repatriated without the approval of the Bank of Guyana.

6. Value Added Tax

Rate

The following rates apply to the VAT

- Supply of goods and services...20%
- Essential food items...0%
- Export of goods...0%
- Certain supply of services to non-residents......................................0%

Registration

Registration for VAT purposes is categorized as being mandatory or voluntary.

- Mandatory registration:
  - Where the taxable activity equals or exceeds the threshold of GYD 15,000,000 (USD 72,500) at the end of twelve (12) months, or where the taxable activity exceeds the threshold in less than 12 months, the person carrying on the taxable activity must register for VAT, and
  - Where the taxable activity is expected to exceed the threshold in any period, during the next twelve (12) months, the person carrying on that taxable activity must register.
- Voluntary registration:
  - If your taxable turnover is below GYD 15,000,00 (USD 72,500) threshold, you may apply for voluntary registration. However, specific compliance criteria apply.

Taxable supply

Taxable supply means a supply of goods or services in Guyana in the course or furtherance of a taxable activity, other than an exempt supply.

- A supply of goods means:
  - A sale of goods;
  - A grant of the use or right to use goods, whether with or without a driver, pilot, crew, or operator, under a rental agreement, credit agreement, freight contract, agreement for charter, or other agreement under which such use or right to use is granted;
  - A transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water.

- A supply of services means anything which is not a supply of goods or money, including:
  - The granting, assignment, cessation, or surrender of a right;
  - Making available a facility or advantage;
  - Refraining from or tolerating an activity.

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The supply of goods or services is an exempt supply if it is specified in Schedule II to the VAT Act, such as:

- Supply of international transport services;
- Supply of kerosene oil;
- Educational services.

Place of supply

The place of supply is determined as follows.

- Supply of goods takes place where the goods are delivered or made available by the supplier or if the delivery or making available involves the goods being transported, the place of supply is where the goods are when the transportation commences.
- Supply of services takes place at the location of the supplier's place of business from which the services are supplied.

With regards to the supply of cultural, artistic, sporting, educational, or similar activities, or services connected with movable goods, the supply of service takes place where the service is physically carried out. In addition, the supply of services connected with immovable property takes place where the property is located.

Taking the abovementioned scenarios into account, the place of supply of services by contractors in the petroleum industry will often be Guyana. This means that VAT is due in Guyana. In case of import of services the tax payable will be due by the recipient of the services (reverse charge system).

VAT on import

VAT on imports is levied as follows.

- An import of goods occurs for VAT purposes when the goods are entered for purposes of the Customs Act into Guyana.
- An import of services occurs for VAT purposes at the time the service is delivered or made available, an invoice is issued or any consideration for the supply of services is received.

Where tax is payable on an import of goods, the importer is required, upon entry of the goods, to provide the GRA with an import declaration and pay the tax due.

7. Import duties

Import of goods is subject to import duties between 5% and 150%. In the case of temporary import of equipment (period of 3 months), a request can be made at the GRA for the temporary importation without the payment of import duties. Certain exemptions apply to the import duties.

8. Wage tax

Employers paying remunerations to employees must make income tax deductions from such payments. Remuneration includes all salaries, wages, overtime, leave pay, etc. The employer should withhold the income tax due and remit the income tax as pay-as-you-earn (PAYE) to the GRA by the 14th day, following the month in which deductions were made.

The following income tax rate rates will apply:

1. When determining the tax on the chargeable income for individuals, the following tax rates will be utilized:
    a. 28% on income less than GYD 1,800,000 (USD 8,552), earned annually.
    b. 40% on income in excess of GYD 1,800,000 (USD 8,552), earned annually.
2. GYD 780,000 (USD 3,706) or one-third of the individual's income earned on an annual basis, will be allowed as a deduction (or free pay) to determine the chargeable income.
3. National Insurance (NIS) contributions by employees will be allowed as a deduction in determining the chargeable income.

Employees working in Guyana become taxable for income tax purposes as of the first day the employees work in Guyana. Employees of contractors working in the petroleum industry in Guyana will therefore be subject to income tax in Guyana.

9. National Insurance Contributions (NIS)

The employer is required to deduct and remit the National Insurance Contributions on behalf of its employees. These are due on monthly earnings of employees up to GYD 280,000 (USD 1,346) and weekly earnings up to GYD 64,615 (USD 310). The rates of contribution are 8.4% for employers and 5.6% for employees.

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10. Property tax

The property tax is levied and collected for each year in respect of the net property, on the corresponding valuation of every person. The property rates are as follows:

Net property of person and a company (GYD)	Property rate tax
On the first 40,000,000	0
On every dollar of the next 20 million	0.5
For every dollar of the remainder of net property	0.75

11. Foreign exchange rate and foreign exchange restrictions

The central bank of Guyana does not apply a foreign exchange charge. No foreign exchanges restrictions apply.

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12. Contact

If you would like to to know more, have questions or remarks in respect of the contents of this memo, please contact:

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