

# TAX OBLIGATION AND COMPLIANCE IN THE OIL AND GAS SECTOR

## TANZANIA

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*A Practical Guide for State Attorneys (Panelist Contribution)*

Litigation | Arbitration | Public Interest Protection

# Tanzania's Oil & Gas Landscape

**57 TRILLION**

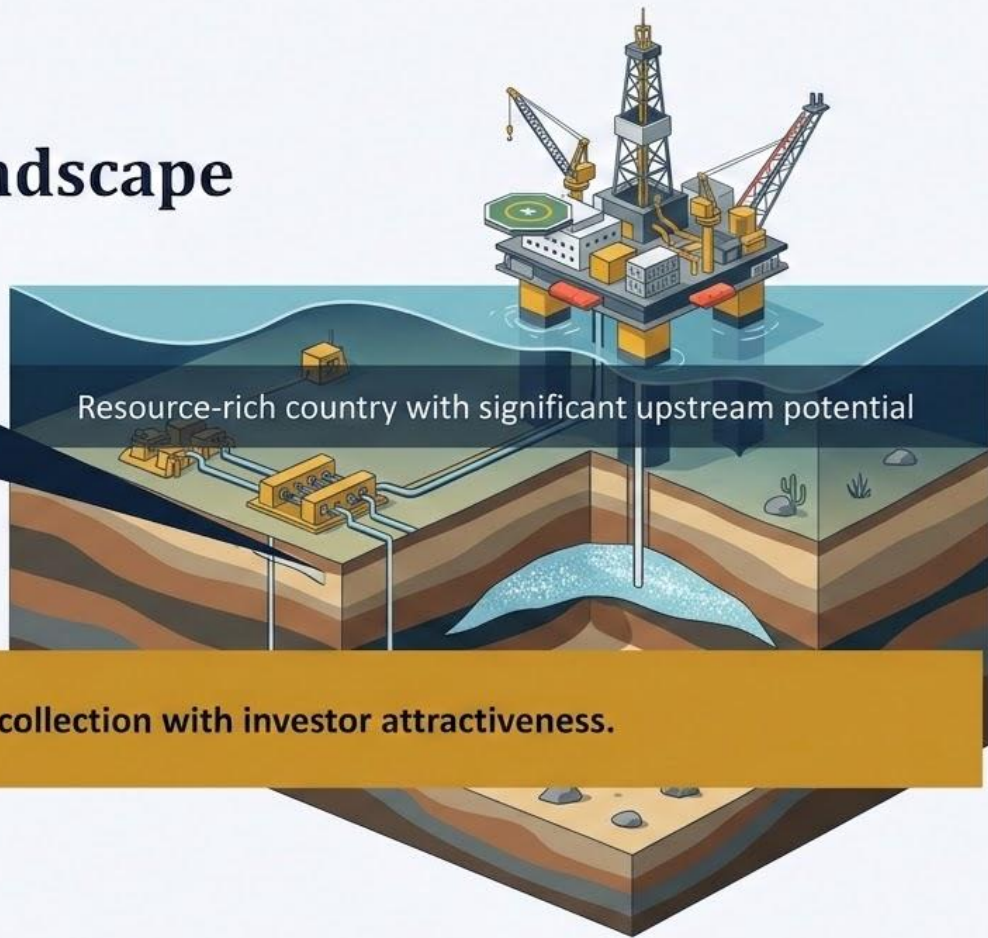
cubic feet of natural gas

Resource-rich country with significant upstream potential

## The Core Challenge

How to balance revenue collection with investor attractiveness.

- ❖ 2013 fiscal reforms (MPSA 2013)
- ❖ 2015 Legal Reforms
- ❖ 2017 Legal Reform
- ❖ LNG commercialisation underway — limited window before global energy transition



# Understanding the Petroleum Fiscal Regime

## What is a Petroleum Fiscal Regime?

- ❖ A statutory + contractual framework: all compulsory payments IOCs make to Government
- ❖ Two goals: incentivise investment AND collect a fair state share of resource rent
- ❖ Neither goal alone suffices — the tension between them is Tanzania's central fiscal challenge

## Tanzania's System: PSC

- ❖ Governing laws: Constitution 1977, PA 2015, ITA 2004 (Div. V), MPSA 2013, VAT Act 2015, NR Laws 2017
- ❖ State retains resource ownership; IOC bears all costs and risks in exchange for a share of profit gas/oil
- ❖ Cost oil (up to 50% of gross post-royalty) → recovered by IOC; profit gas → split TPDC/IOC per production tranche
- ❖ TPDC carries 25% back-in; Government share: 60–85% deepwater, 60–80% onshore (at higher production tranches)
- ❖ Fixed-rate tools (royalty, bonuses) collect early revenue but are regressive; profit-based tools (CIT, APT) are fairer but complex

# Key Fiscal Instruments

1

## Royalty

12.5% onshore / 7.5% offshore  
On gross production, regardless of profitability

2

## Corporate Taxes

CIT 30%, CGT 30%  
Withholding Tax, VAT, Customs

3

## Additional Profit Tax

Applies on windfall profits  
Ensures government captures upside

4

## Cost Recovery

Up to 50% of production (post-royalty)  
Disputes common on cost classification

5

## Profit Sharing

Between Government (TPDC) and Contractor  
Share increases with production volume

6

## Bonuses & Ring-fencing

Signature: USD 2.5M / Production: USD 5M  
Each project taxed separately

# Royalty & Corporate Tax Obligations

## 3.1 ROYALTY

- ❖ Charged on gross production
  - ❑ 12.5% — onshore
  - ❑ 7.5% — offshore
- ❖ Paid regardless of profitability

### Legal Significance

- ❖ Non-neutral: charged regardless of profitability
- ❖ Disputes: production measurement, offshore vs onshore classification

## 3.2 CORPORATE TAXES

### ❖ Applicable Taxes

- ❖ Corporate Income Tax (CIT) — 30%
- ❖ Capital Gains Tax (CGT) — 30%
- ❖ Withholding Tax
- ❖ VAT and Customs Duties

### Critical Issue for Practitioners

- ❖ CGT taxes future projected gains at transfer — subjective valuation triggers disputes (s.82 ITA). Risk: IOCs taxed on income that may never materialise

# APT, Cost Recovery & Structural Rules

## 3.3 Additional Profit Tax

- ❖ Applies when project profitability increases
- ❖ Ensures government captures windfall profits

## 3.4 Cost Recovery

- ❖ Investors recover costs from production
- ❖ Limit: 50% of production (after royalty)

### Common Disputes:

- ❖ What qualifies: costs must be “petroleum costs” per 2019 Regulations — frequently disputed
- ❖ Non-recoverable: CIT, APT, WHT, bonuses, penalties, negligence costs

## 3.7 Ring-Fencing

- ❖ Each project taxed separately
- ❖ No offset of losses between projects

### Implication:

- ❖ Requires cost separation: exploration vs development within same block
- ❖ Discourages further exploration within developed fields — practical disincentive

# Bonuses, Government Participation & Local Content

## 3.6 BONUSES

- Signature Bonus: USD 2.5 million
- Production Bonus: USD 5 million

## 3.8 GOVERNMENT PARTICIPATION

TPDC holds minimum 25% carried interest — exercisable at any time. Carried at LIBOR+1%, recovered from TPDC's future cost oil share (Art.10, MPSA)

## 3.9 Local Content & Domestic Obligations

- Mandatory local employment requirements
- Local procurement obligations
- Domestic supply obligations
- Government may direct IOC to commit full profit gas share to domestic supply (s.97-99 PA)
- Non-compliance can trigger regulatory penalties

Profit Gas Split: Onshore 0-19.99 MMSCFD = TPDC 60% / Contractor 40%; rises to 80/20 at 80+ MMSCFD. Deepwater: starts 60/40, reaches 85/15 at 750+ MMSCFD.

# Tax Compliance Issues in Practice

## 4.1 Key Compliance Risks

- ❖ Cost misclassification: exploration vs development within one block — determines millions in tax liability
- ❖ VAT on petroleum data licensing: is seismic data a good, service, or licensed right? — TPDC/TRA live dispute before TRAB
- ❖ CGT on farm-in/farm-out: future projected gains taxed now — valuation conflict between TRA and IOC
- ❖ Delayed VAT refunds increase operational costs — reduces regime attractiveness

## 4.2 Structural Challenges

- ❖ APT is contractual (MPSA Art.17) — jurisdictional question:
- ❖ TRA and TPDC audit same expenditures under different standards — inconsistent Government positions
- ❖ Transfer pricing: related-party fees (management, technical) scrutinized under ITA transfer pricing rules

# Tax Dispute Resolution Framework

## 5.1 Domestic Mechanisms

- ❖ Tax Revenue Appeals Board (TRAB)
- ❖ Tax Revenue Appeals Tribunal (TRAT)

### **These bodies handle:**

- ❖ Tax assessments
- ❖ Notice of Objection: 30 days + 1/3 deposit of disputed tax
- ❖ Statements of Case + expert evidence on costing, valuations

## 5.2 Arbitration & Natural Resource Laws

### **The Natural Wealth Laws (2017) introduced:**

- ❖ Mandatory contract review and renegotiation
- ❖ Restrictions on international arbitration
- ❖ Parliamentary control over disputes

### **Impact:**

- ❖ Increased uncertainty: BIT exposure — IOCs may sue under investment treaties
- ❖ Arbitration Act 2020 (s.100): partial fix — RRUTA s.6(2)(i) still lists arbitration clauses as potentially “unconscionable”

# Role of State Attorneys in Tax Disputes

6.1

## LITIGATION

- ❖ Represent TRA & TPDC — identify which entity is your client; interests may diverge.
- ❖ Build evidentiary record early: cost accounts, audit files, valuation reports
- ❖ Consider settlement after TRAB — complex disputes may deliver better certainty than full appeal.
- ❖ For International dispute coordinate with all Government stakeholders.

6.2

## ARBITRATION

- ❖ Assess BIT exposure before advising on fiscal changes or contract renegotiation
- ❖ Older PSAs with stabilisation clauses: assess retroactive application of RRUTA — legally contested
- ❖ FET & indirect expropriation: post-investment fiscal changes may constitute treaty breach

6.3

## ADVISORY FUNCTION

- ❖ Coordinate TRA, TPDC, PURA & AG before proceedings — contradictory positions weaken the State's case
- ❖ 4-point legal risk check: tax law + MPSA terms + BIT obligations + investor confidence impact
- ❖ Understand petroleum operations — effective advocacy requires knowing how the industry actually works

# Key Legal and Strategic Issues for State Attorneys

## Non-Neutral Tax Regime

- 7.1 12.5% royalty + 50% cost recovery cap + USD 2.5M signature bonus — combined effect renders marginal fields unviable and may cause premature block abandonment

## Stability Concerns

- 7.2 NWRPSA & RRUTA (2017): Parliament may declare contract terms “unconscionable” and order renegotiation — subjective definition increases perceived investor risk

## Complexity of Tax Laws

- 7.3 ITA ss.65M & 65N: petroleum costs excluded from deductions — risk of taxing gross income, not profit. CGT taxes future gains at transfer (s.65Q) — valuation contested between TRA and IOC

## Competitiveness

- 7.4 Tanzania: 12.5% royalty, 50% cost recovery, USD 2.5M bonus vs Mozambique: 6% royalty, 60% cost recovery, no signature bonus — Tanzania tougher despite lower geological certainty

# Guidance for State Attorneys

8.1

## IN LITIGATION

- ❖ Know your instrument: ITA, PA 2015, MPSA & VAT Act all interact — no single statute governs
- ❖ Build the evidentiary record early: cost audit files, valuation reports, cost accounts
- ❖ Consider settlement post-TRAB — long appeals cost more than negotiated outcomes on novel legal questions

8.2

## IN ARBITRATION

- ❖ Assess BIT exposure before fiscal changes — IOCs may have treaty claims independent of PSA dispute clause
- ❖ On pre-2017 PSAs: carefully analyse whether RRUTA applies retroactively to existing arbitration clauses
- ❖ FET standard & indirect expropriation — adverse fiscal changes post-investment may constitute treaty breach

8.3

## IN ADVISORY WORK

- ❖ Coordinate TRA, TPDC, PURA & AG positions before proceedings — contradictory Government positions weaken cases
- ❖ Recommend regime reforms: CGT on realised gains only, clear ITA deductibility rules
- ❖ Push for full revision of Natural Resource Laws — remove subjective “unconscionable” triggers and fully restore international arbitration

# Additional Recommended Topics for Training

**01**   **Transfer Pricing**

Related-party management fees, technical services & financing — ICA  
transfer pricing rules + ring-fencing interaction

**02**   **International Taxation**

BEPS Pillar Two, permanent establishment risks, withholding tax on  
non-resident service providers

**03**   **LNG Taxation Frameworks**

Tanzania LNG Host Government Agreement, gas sales agreements &  
fiscal terms for monetisation

**04**   **Comparative Fiscal Regimes**

Mozambique, Uganda, Kenya — how peer regimes balance royalty cost  
recovery & investor protections vs Tanzania

**05**   **Tax Audit Strategies**

Cost recovery audits, production measurement verification & PURA  
regulatory compliance inspections

## CONCLUSION

# Tanzania's Oil & Gas Tax Regime

Comprehensive but Complex

Revenue-Focused but Less Investor-Friendly

Legally Robust but Administratively Challenging

## For State Attorneys

The regime tips the balance toward the state — yet a more balanced, competitive regime attracts more investment and ultimately yields more revenue. Three reforms matter most: (1) CGT on realised not projected gains, (2) comprehensive revision of the Natural Resource Laws and other than royalty, taxation should be on profit. . Tanzania's window to monetise 57.54 tcf before energy transition is real. State Attorneys are the legal custodians of that opportunity.