Petroleum Industry (Income Tax) Rules, 2041 (1985)

Petroleum Industry (Income Tax) Rules, 2041 (1985) Date of Publication in Nepal Gazette 2041-12-2 (14 March 1985)
In exercise of powers conferred by Section 65 of the Income Tax Act, 2031 (1974), Government of Nepal has made the following Rules:

1. Short Title and Commencement:

1) These Rules shall be called the "Petroleum Industry (Income Tax) Rules, 2041(1985).

(2) These Rules shall come into force on such date as Government of Nepal may, by a Notification published in the Nepal Gazette, appoint. ∗

2. Definitions:

Unless the subject or context otherwise requires, in these Rules:

(a) "Exploration Capital Costs" means exploration capital costs as referred to in Rule 3.

(b) "Act "means the ⇔ Income Tax Act, 2031, (1974).

(c) "Contract Area" means contract area as referred to in the Petroleum Agreement.

(d) "Current Operating Costs" means current operating costs as referred to in Rule 4.

(e) "Contractor" means any Nepalese or foreign investor who may be a party to a Petroleum Agreement with Government of Nepal as referred to in Section 8 of the Nepal Petroleum Act, 2040 (1983).

(f) "Capital Costs" means capital costs pursuant to Rule 5.

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These Rules were made effective since 31 March 1986 by a Notification published in Nepal Gazette,

Part 3, Vol. 35, and No.50, dated 31 March 1986.

⇔ Income Tax Act, 2058 repealed Income Tax Act, 2031.

(g) "Petroleum Industry" means a Contractor conducting Petroleum Operations pursuant to the Nepal Petroleum Act, 2040 (1983).

(h) "Petroleum Agreement" means an agreement between Government of Nepal and a Contractor in respect of Petroleum Operations as referred to in Section 8 of the Nepal Petroleum Act, 2040 (1983).

(i) "Commercial Production Day" means the day on which a Contractor makes its first sale, exchange or transfer of Petroleum produced from a production Area under a Petroleum Agreement with or without payment.

(j) "Accounting Period" means a year of income comprising a period of 12 consecutive months beginning with January 1 and ending on the following December 31, except in the following cases:

(a) The first Accounting Period shall begin on the Commercial Production Day and end on the

following December 31.
(b) The last Accounting Period shall end on the day a Contractor ceases to carry on Petroleum Operations.
(k) “Calendar Quarter” means a period of three consecutive months beginning with January 1, April 1, July 1 or October 1 and ending on March 31, June 30, September 30 or December 31, respectively.

3. Exploration Capital Costs:

(1) All expenditures which are incurred in Petroleum Operations prior to the issue of a notice of discovery of
Petroleum under a Petroleum Agreement shall be treated as Exploration Capital Costs.
(2) Exploration Capital Costs incurred after the issue of a notice of discovery of Petroleum in any part of a contract Area shall be included in Exploration Capital Cost if Petroleum so discovered is subsequently deemed not to be a commercial discovery.

4. Current Operating Costs:

All non-capital expenses incurred after the commercial Production Day by a Petroleum Industry shall be treated as
Current Operating Costs, including the following expenses:
(a) Labour, materials and services used directly in day-to-day Petroleum Operations including surveys, development, production treatment, transfer, storage, handling and delivery of Petroleum and repair, maintenance, and analogous activities.
(b) General and office administration, services and operating overhead expenses incurred in Nepal and abroad directly in connection with Petroleum Operations, including expenses relating to technical and related services, materials, transportation, rentals, professional personnel and similar expenses.
(c) Insurance premiums, fees and all expenditures in settlement of all losses, claims, damage and judgments related to Petroleum Operations.
(d) Losses arising from inventory adjustments.
(e) Interest, fees and commissions on loans and guarantees.
(f) Foreign exchange losses arising from changes in exchange rates between Nepalese currency and Dollars

5. Capital Costs:

All expenses incurred by a petroleum Industry for goods that normally have a commercial life or value of more than One year, shall be treated as Capital Costs, including the following expenses:
(a) All expenditures related to Petroleum Operations prior to Commercial Production day, to the

extent not covered in Clauses (b) through (f) below.
(b) All expenses relating to exploration and appraisal work undertaken in a Contract Area after the Commercial Production Day, and all expenses incurred in drilling, testing and completing development wells, and for construction of permanent facilities for the production, treatment, storage and transport of petroleum.
(c) Expenses incurred for providing education and training to Nepali nationals.
(d) Fees paid to Government of Nepal for purchase of seismic and other information and report.
(e) Expenses incurred in connection with the acquisition or transfer of rights under a Petroleum Agreement.
(f) All other capital expenses related to Petroleum Operations under a Petroleum Agreement after the Commercial Production Day.

6. Expenses Not to be Included:

Notwithstanding anything contained in any other Rule of these Rules, the following expenses shall not be included
in Current Operating Costs or Capital Costs:
(a) Expenses incurred in excess of the following limits:
(1) Expenses of Work performed directly by a Petroleum Industry shall be limited to expenses which are actually
incurred and are not in excess of competitive charges by non- affiliated third parties for the performance of such work.
(2) Overhead expenses incurred in Nepal shall not exceed actual expenses.
(3) Overhead expenses incurred by a Petroleum Industry (and all entities affiliated with Petroleum Industry) shall be limited to the extent that the amounts have been approved annually in advance by Government of Nepal, which amounts shall in no event exceed the following ceilings:

Portion of Annual Expenditure (excluding overhead expenses incurred
outside Nepal) Ceiling on Overhead
Expenses
Up to US$1,000,000
US$1,000,000 to US$ 5,000,000
US$ 5,000,000 to US$ 20,000,000
Over US$ 20,000,000
5%
3%
1%
o.25%
(4) Expenses incurred for goods and services of sub-contractors shall not exceed actual

expenses, and shall not exceed competitive charges by non-affiliated third parties for similar goods and services at the time the goods and services are contracted for.

(5) Expenses incurred for acquiring or taking on lease goods, equipment and other materials and construction of facilities, shall not exceed actual expenses and shall not exceed competitive prices, rentals and construction costs for similar goods. Further, such costs shall not include any markup of commission received by the Petroleum Industry or any of its affiliated companies.

(6) Interest, fees and commissions on loans and guarantees shall not exceed competitive rates of interest, fees and

commissions in comparative arms length transactions.

(b) Expenses not directly related to Petroleum Operations in a Contract Area under a Petroleum Agreement.

(c) Income tax or penalties paid in Nepal or any foreign county.

(d) Expenses incurred for the marketing of Petroleum outside Nepal, and costs of transporting, storing, handling and export of Petroleum beyond the point of export in Nepal.

(e) Any expenses which fall within the definition of Petroleum Costs under a Petroleum Agreement but were not reported to Government of Nepal in a statement of Petroleum Costs.

(f) Losses which are recovered through insurance of any contract of indemnity.

(g) Expenditures of a personal nature, gifts and donations.

(h) Expenses incurred before the signing of a Petroleum Agreement.

(i) Foreign exchange losses other that arising from changes in exchange rates between Nepalese currency and Dollars.

(j) Bonuses paid to Government of Nepal.

7. Statement of Income :

(1) A Contractor shall submit the following statements of income from Petroleum Industry in the form prescribed by

Government of Nepal by a Notification published in the Nepal Gazette:

(a) Estimated quarterly statement of income within Thirty days after the expiry of each Calendar Quarter.

(b) Annual statement of income within three months after the expiry of each Accounting Period.

(2) A Contractor shall pay estimated quarterly income tax when submitting each quarterly statement of income under Clause (a) of Sub-rule (1).

(3) Subject to Sub-rule (2) a Contractor shall pay any income tax due, or submit an application for refund of any over payment of income tax, within Three months after the expiry of each Accounting Period.

8. Gross Income of a Petroleum Industry: The gross income of a Petroleum Industry shall be equal to the value of Petroleum sold or disposed of, plus all other income or proceeds received which are related to Petroleum Operations. The value of Petroleum sold or disposed of shall be determined according to the provisions of the Petroleum Agreement.

9. Net Income of a Petroleum Industry:

The net income of a Petroleum Industry shall be computed for each Accounting Period by deducting from
gross income under Rule 8 Current Operating Costs, Capital Costs at rated of depreciation under Rule 10, and accumulated losses from past Accounting Periods under Rule 11

10. Depreciation of Capital Costs:

(1) Capital Costs may be depreciated beginning with the first Accounting Period or the Accounting Period in
which the asset is placed in service, whichever is later, as follows:

(a) Exploration Capital Costs immediately.

(b) Capital Cost incurred for drilling, testing, and completing development wells over a period of Four years.

(c) All other Capital Costs over a period of Six years.

(2) Depreciation shall be calculated on a straight line basis.

(3) The undepreciated Capital Costs of an asset taken out of service shall be depreciated on the basis described above. In the case such assets are subject to unexpected loss or destruction, the undepreciated value may
be deducted as Current Operating Costs in the year of such loss or destruction

11. Carry Forward of Losses :

Losses incurred by a Petroleum Industry in any Accounting Period may be carried forward and such losses may be deducted from gross income in calculating net income in any subsequent Accounting Period.

12. Accounting: Except as expressly provided in this Rule, accounting Methods, Rules and Practices for determining gross income, expenses and net income of a Petroleum Industry shall be consistent with accounting Methods, Rules and Practices which are sound and usual in the international Petroleum industry

13. Saving: Except as otherwise provided herein, the ⇔ Income Tax Act, 2031 (1974) and Rules framed thereunder shall apply