



# Ministry Of Finance

## Board Of Inland Revenue

- **TRANSFER PRICING IN THE PETROLEUM INDUSTRY OF TRINIDAD & TOBAGO.**



29 SEPTEMBER 2015





## THE PETROLEUM INDUSTRY

- Subdivided into the upstream , midstream, downstream
- (A)The upstream are companies engaged in exploration / production of Crude Oil , and Natural Gas.
- Refining of crude oil.
- (B) Midstream are the companies engaged in the sale of
- Natural gas and the processing of LNG (freezing of natural gas to minus -161 celsius to form a liquid) Trinidad is the seventh largest producer of lng in the world.
- (C )Downstream production of Ammonia, methanol and Urea.



# TAXATION REGIME

- Generally, companies engaged in business activities in Trinidad and Tobago are subject to corporation tax at a rate of 25%.
- Companies engaged in the business of manufacture of petrochemicals, ( urea, methanol , ammonia )liquefaction of natural gas and the transmission of natural gas are subject to corporation tax at the rate of 35%. Governed by the Corporation Taxes Act.
- Companies engaged in upstream operations in T&T are subject to a special fiscal regime, principally governed by the Petroleum Taxes Act (PTA).



# Taxation Upstream

- Rate of tax petroleum profits tax 50%
- Unemployment Levy 5%
- Supplemental Petroleum tax  
Scale rates 18-35%
- Royalty on oil gas produced 12%
- Therefore effective tax rate of 70-75%
- Upstream tax rate is twice that of the midstream and lng business.



# LEGISLATION

- **Petroleum Taxes Act Chap. 75:04**
  - Petroleum Profits Tax
  - Supplemental Petroleum Tax
- **Income Tax Act Chap 75:01**
  - Withholding Tax [5% ( after tax profits less profits reinvested)]
- **Income Tax (In-Aid of Industry) Act Chap. 85:04**
  - Capital Allowances (initial and annual)
- **Unemployment Levy Act Chap 75:03**
  - (5% of Chargeable Profits before loss offset)
- **Green Fund Levy (0.1% on gross sales or receipts)**



# ECONOMIC CONTRIBUTION OF THE PETROLEUM INDUSTRY.

Selected Economic Indicators	2009	2010	2011	2012	2013
Energy revenue as % of GDP	29	34.1	32.6	32.3	32.4
Energy sector share of government revenue (%)	49.5	51.8	57.6	54.0	50.4
Energy exports as % of total exports	86.1	84	85	81.4	85
Energy employment as a % of total employment	3.3	3.2	3.2	3.3	3.4

*SOURCE: CBTT ANNUAL ECONOMIC SURVEY 2013*



# TRANSFER PRICING HISTORY.

- 1. Currently Trinidad/Tobago has no transfer pricing legislation.**
- 2. The OECD Model is the preferred choice, consultants are working closely with the Ministry of Finance / Board of inland Revenue to get the legislation enacted.**



# TRANSFER PRICING ISSUES UPSTREAM

- Production platforms oil/gas are generally bought by the parent Company for the local MNE, the tax authority in T/T has no information to verify whether the cost were reasonable.
- These platforms are built abroad ie Texas
- A production platform can cost between \$250-350M US and can be completely written of for tax in about 5 years.
- In recent years a few of these platforms were fabricated locally. The fabrication cost are small in comparison to the other production cost which are paid for abroad to related/ unrelated entities of the MNE.





# Transfer Pricing Upstream

- In 2013 29.6 million barrels of crude oil was produced.
- Exports of crude oil was 12.5 million barrels, the oil exported are high quality and the prices reported were in line with the spot prices for Brent and West Texas .
- The remainder of the oil produced was bought by the refinery which is government owned for processing.
- From the exports and sale of local crude oil the prices reported appear reasonable and as such transfer pricing
- Issues appear negligible.



# Transfer Pricing Midstream Lng

- The LNG contracts are long term typically 20 years (train1)trinidad began LNG production in 1999. These contracts are with marketing entities of the MNE who have lng contracts to supply different countries of the world, ie. Spain USA.
- LNG are exported to Spain, Everett Terminal Boston, Elba Island USA, Spain, Chile, and Argentina.
- For Lng exported to the USA the price reported is the Henry Hub Spot price (net back)less shipping and other related cost



# TRANSFER PRICING LNG

- There has been a significant increase in the switching of cargoes between destination. When the price for Lng was high in Spain the cargoes was switched from Spain to that of the USA. This resulted in a significant loss of revenue.
- Additionally it appears that the marketing companies for the Lng are not selling to the most lucrative market. In a july business edition of the Guardian the loss of revenue for 2015 has been Quantified at \$100(tt) Million dollars,by the Minister Of Energy.



# Transfer Pricing Downstream

- Most of the products are sold on the spot market via their marketing entities located in the US, Germany etc. The marketing companies get a 4- 5% discount on the spot price.
- Should this discount be allowed since currently there are established markets for these products.
- In invoicing for this discount 95% of the income is reported in T&T, however the marketing entity will bill the company who bought the product for the full price.
- The tax authorities in Trinidad cannot verify whether the 5% revenue is reported to tax abroad.
- The spot price reported is usually the low Fertecon caribbean, Tampa fob.



# Transfer Pricing Downstream

- Currently there are publication for spot prices by Fertecon, Green Markets , and Fmb, for each the price vary as much as 10\$ us per tonne.
- By legislating for example the price reported should be the average of all three there is a potential an increase in taxable income of \$4 us per tonne. In 2013 exports was 10.35 million tonnes source (MEEA)
- Some of the cargoes even though the price reported for tax in Trinidad is Caribbean Tampa Fob, these products are sold in different markets NW Europe, Brazil, Us Gulf Coast, however the additional income from these markets cannot be charged to tax in Trinidad because of the contract with the marketing entity.



# Transfer Pricing Cross Border Transaction

- Trinidad & Tobago is party to the Caricom Tax Treaty, this treaty Article 11 states that Dividends paid from a company resident in one state to another is exempt from withholding tax.
- Barbados, St Kitts and Nevis has in their tax legislation benefits of setting up as an (IBC) international Business Corporation.
- Major benefit no withholding tax is payable on dividends and interest paid to non residents or another Ibc.
- The MNE have used this loophole in the law by setting up a sub parent in Barbados, and Nevis however the audited accounts states that the ultimate parent still resides in U.S.A and Canada



# Transfer Pricing Cross Border Transactions.

- Dividends are then paid to the parent in Barbados and as such to withholding tax is payable.
- Trinidad & Tobago has been challenging these (Treaty shopping, Conduit companies) since 2005 these cases are at various stages in the court system.
- The loss in withholding tax in the petroleum sector is approximately \$200M per annum.
- This issue was raised by myself in seminar held 10-12 June 2014 (Taxation Of Large Companies Transfer Pricing)
- The members of Caricom all agreed that the Order should be amended to correct this situation. They were willing to amend the legislation, however to date nothing has been done.



# DISCLAIMER

- Note the information disclosed is purely for training purposes, as such the presenter cannot be held liable for damages in any court of law for the information presented comments and suggestions relating to transfer pricing issues in the petroleum industry of Trinidad & Tobago.





# *THE END*

