

« Presidential Legislative Decree N°. 6/18

Defines the incentives and the procedure for the adjustment of the contractual and fiscal terms applicable Qualified Marginal Zones - Repeals all legislation contrary to it, namely Presidential Legislative Decree N°. 2/16, of 13 June 2016. »

Presidential Legislative Decree N°. 6/18, of May 18

Considering that, under the legislative authorization of the National Assembly granted by Law N°. 4/16, of 17 May, Presidential Legislative Decree N°. 2/16, of 13 June 2016, which defines the procedure and the incentives for the adjustment of the contractual and fiscal terms applicable to the development of marginal discoveries, was approved.

Considering the need to adjust the concepts and mechanisms, as well as the tax incentives introduced by Presidential Legislative Decree N°. 2/16, of 13 June, in order to ensure compliance with the Law on Taxation of Petroleum Activities (Law N°. 13/04, of 24 December and the contracts underlying the petroleum concessions under the Petroleum Activities Law (Law N°. 10/04, of 12 November);

Considering that this adjustment is intrinsically dependent on the revision of the fiscal incentives granted by Presidential Legislative Decree N°. 2/16, of 13 June 2006, eliminating in particular the accumulation of taxes on the same type of contract or the effective reduction of rates by revising the tax matrix that supported the statute in question;

Considering that the commercial exploitation of recoverable resources from marginal discoveries remains a priority for the Executive, to continue to promote growth of the petroleum industry and the generation of additional tax revenue;

The President of the Republic, under the legislative authorization of the National Assembly, granted through Law N°. 6/18, of May 10 on the Adjustment of the Contractual and Fiscal Terms Applicable to the Development of Marginal Discoveries in Petroleum Concessions pursuant to Articles 125.1 and 125.3, Article 161(c) and Article 171 of the Constitution of the Republic of Angola, and to Articles 11.3 and 11.4 of the Law on Taxation of Petroleum Activities, approved by Law N°. 13/04, of 24 December 2004, hereby decrees as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1

(Subject)

This statute defines the incentives and the procedure for the adjustment of the contractual and fiscal terms applicable to Qualified Marginal Zones.

Article 2

(scope)

This diploma applies to discoveries made in Qualified Marginal Zones within petroleum concessions.

Article 3

(Definitions)

For the purposes of this statute, the following definitions shall apply:

- (a) «***Associates***» means the legal persons incorporated abroad or incorporated under Angolan law and headquartered in national territory, which are associated with the National Concessionaire in any of the forms provided for in Article 14.2 of Law N°. 10/04, of 12 November (Petroleum Activities Law);
- (b) «***Declaration of Marginal Discovery***» is a document issued by the competent authorities, declaring that a particular discovery is, for the purposes of applying this statute, a marginal discovery;
- (c) «***Contracted Entities***» means legal persons incorporated under foreign law or incorporated under Angolan law and headquartered in the national territory, contracted by the National Concessionaire under risk service contracts for the carrying-out of petroleum operations, in accordance with the law;
- (d) «***Qualified Marginal Zone***» means:
 - (i) In production sharing agreements and risk service contracts, the Development Area comprised by the marginal discoveries subject to a Declaration of Marginal Discovery;
 - (ii) In association contracts, the wells with the marginal discoveries subject to a Declaration of Marginal Discovery.

Article 4

(Principle of contractual tolerance and flexibility)

Incentives for the development of marginal discoveries are governed by the principle of contractual tolerance and flexibility, which seeks to adjust the contractual and fiscal terms of the marginal discoveries, to promote the investment of the Associates of the National Concessionaire and the Contracted Entities for the carrying-out of petroleum operations.

Article 5

(Marginal Discovery Concept)

1. For the purposes of this statute, a discovery is considered marginal when one or more deposits, even if subject to joint development, present in a certain moment a reduced profitability that does not justify the commercial discovery declaration by the National Concessionaire and its Associates, or Contracted Entities, taking into account the legal and fiscal regime in force.
2. The existence of one or more deposits that have the following characteristics is an indicator of the marginality of a discovery:
 - (a) Recoverable resources of less than 300 million barrels;
 - (b) Water depth greater than 800 meters;
 - (c) Income for the State of less than US\$10.5 per barrel;
 - (d) Income for the Associates of the National Concessionaire of less than US\$ 21.0 per barrel; and
 - (e) After-tax internal rate of return of less than 15%, calculated on current contractual and fiscal terms of the concession.
3. The Declaration of Marginal Discovery can only be made when at least the indicators defined in subparagraphs 2(a) and 2(e) are fulfilled.
4. Exceptionally, discoveries, even if aggregated, with reserves above 300 million barrels, whose development is complex due to the geological structure of the deposits and/or water depth, may be subject to a Declaration of Marginal Discovery, provided that the indicator of marginality defined in subparagraph 2(e) above is fulfilled.
5. It is incumbent upon the Ministerial Departments supervising the petroleum industry and public finance, on the basis of a proposal of the National Concessionaire, to adjust, by means of a Joint Executive Decree, the indicators referred to in subparagraphs 2(c) and 2(d) above, whenever such is justifiable.

CHAPTER II
INCENTIVES TO THE DEVELOPMENT OF MARGINAL DEPOSITS

SECTION I
INCENTIVES

Article 6
(Adjustment of contractual and fiscal terms)

1. In association contracts, risk service contracts and production sharing agreements, the contractual and fiscal terms may be adjusted to encourage the development of marginal discoveries.
2. The adjustment of the contractual and fiscal terms shall only apply to the Qualified Marginal Zone, with the other contractual and fiscal terms of the concession on the discoveries not covered by the Declaration of Marginal Discovery remaining unchanged.
3. For the discoveries with resources of more than 300 million barrels that, exceptionally, are the subject of a Declaration of Marginal Discovery in accordance with the provisions of Article 5.4, the contractual and fiscal terms set forth in this statute shall apply.
4. Subject to agreement between the National Concessionaire and the Associates or Contracted Entities, the extension of the production period of a development area or of an association contract, under the legal and contractual terms, may be requested to the Ministerial Department supervising the petroleum industry to enable the development and production of marginal discoveries through existing facilities in that area or contract.
5. In association contracts, exclusively for exploration costs, tax deductions may be applied to revenues from the concession area where the marginal discovery is located.

Article 7
(Petroleum production tax)

In association contracts and risk service contracts, the rate of the Petroleum Production Tax (royalty) is set at 10%.

Article 8

(Petroleum Transaction Tax and Production Premium)

In association contracts and risk service contracts, the tax rates and the production premium are set as follows:

1. The rate of the Petroleum Transaction Tax is set as defined in Law N°. 13/04, of 24 December, on the Taxation of Petroleum Activities;
2. The production premium shall be set in accordance with the following table:

IRR (%)	Production Premium (%)
IRR < 10%	95%
>10% < IRR <15%	85%
>15% < IRR <20%	75%
>20% < IRR <25%	65%
>25% < IRR <30%	50%
IRR > 30%	35%

Article 9

(Petroleum Income Tax)

1. In production sharing agreements, association contracts and risk service contracts, the rate of the petroleum income tax shall be 25%.
2. In determining the taxable income in respect of the petroleum income tax, the tax costs shall continue to be calculated in accordance with the tax regime applicable to the respective concession area, with such adaptations as required by the application of this Statute.

Article 10

(Depreciation of Expenses)

Exploration and development expenses in association contracts and risk service contracts, and development expenses in production sharing agreements, shall be depreciated over a period of 3 years, in accordance with the tax regime applicable to the respective concession area.

Article 11

(Cost Oil)

1. In production sharing agreements, the percentage of cost oil is set at 80% of the production of the Qualified Marginal Zone during the first four years after the date of commencement of commercial production.

2. At the end of the period provided for in the preceding paragraph, the percentage of cost oil available to the Associates shall be reduced to 65% of the total production of the Qualified Marginal Zone.
3. The percentages set out in paragraphs 1 and 2 of this article replace, for Qualified Marginal Zones, the initial and increased cost oil limit defined in the contracts.

Article 12
(Investment Premium)

In association contracts, risk service contracts and production sharing agreements, the investment premium is set at 20%.

Article 13
(Re-demarcation of Qualified Marginal Zone)

1. The inclusion of new marginal discoveries in Qualified Marginal Zones is made through joint development, or if this is not possible, through the consolidation of revenues and expenditures between Qualified Marginal Zones, provided that this is economically viable.
2. For the purposes of the preceding paragraph, if it is not possible to include new marginal discoveries in a Qualified Marginal Zone existing in the concession, a new Qualified Marginal Zone may be constituted for the purposes of delimiting the new discoveries, they being however considered for fiscal purposes as a single Qualified Marginal Zone.
3. The re-demarcation of the development area, with the inclusion of new marginal discoveries, is equivalent to the re-demarcation of the Qualified Marginal Zone.
4. Except as provided in Article 5.4 of this statute, the increase in recoverable resources in a Qualified Marginal Zone, including under the terms of this Article, in an amount in excess of 300 million barrels, entails the reinstatement of the initial contractual and fiscal terms of the concession.

CHAPTER III PROCEDURE

Article 14

(Declaration of Marginal Discovery)

1. The contractual and fiscal terms for the Qualified Marginal Zone of a given concession are only modified after the Declaration of Marginal Discovery.
2. It is incumbent upon the Ministerial Department supervising the petroleum industry, upon proposal of the National Concessionaire, to approve the Declaration of Marginal Discovery.
3. The Declaration of Marginal Discovery triggers the constitution of a Marginal Qualified Zone.
4. The inclusion of new marginal discoveries in Qualified Marginal Zones is subject to the same procedure as the Declaration of Marginal Discovery.

Article 15

(Declaration of Marginal Discovery Request)

1. The operator, on behalf of the Associates or Contracting Entities, may request to the National Concessionaire that a given discovery be considered marginal for the purposes of Declaration of Marginal Discovery, taking into account the indicators defined in Article 5 of this diploma.
2. Subject to paragraph 5 of this article below, the Declaration of Marginal Discovery request shall be submitted to the National Concessionaire until the end of the appraisal phase, or upon completion of the appraisal activities for concessions under an association contract in force.
3. The Operator shall justify its request to the National Concessionaire by presenting all technical and financial support documentation, as well as a preliminary development plan with an economic feasibility study containing the simulation of the financial impact, with and without the recommended incentives.
4. The time period for commercial discovery declaration is automatically suspended with the Declaration of Marginal Discovery request.
5. The discoveries that were subject to a Declaration of Commercial Discovery, but whose development was not economically viable, may be the subject of a Declaration

of Marginal Discovery, under the terms of the law, and these discoveries may be located in any part of the concession.

Article 16

(Analysis of the Request)

1. Upon receipt of the Declaration of Marginal Discovery request, the National Concessionaire shall submit its opinion to the Ministerial Department supervising the petroleum industry within 60 business days.
2. The opinion of the National Concessionaire must contain an analysis of the economical nature of the discoveries, namely whether they should be considered marginal for the purposes of this Statute.
3. Within 45 business days of receiving the favorable opinion of the National Concessionaire, the Ministerial Department supervising the petroleum industry must approve the Declaration of Marginal Discovery, by Executive Decree.
4. The abovementioned Executive Decree shall include the new fiscal terms applicable to the Marginal Qualified Zone under the terms of this Statute.

Article 17

(Notification)

1. At the end of the period defined in Article 16.3, the Associates or Contracted Entities shall be notified of the decision regarding the Declaration of Marginal Discovery request.
5. The rejection of the request entails the automatic cancellation of the suspension of the time period for commercial discovery declaration.

Article 18

(Expiration of the Declaration of Marginal Discovery)

1. The approval of the Declaration of Marginal Discovery request expires if:
 - (a) Within twelve (12) months after notification of the approval of the Declaration of Marginal Discovery request, the Associates or the Entity contracted by the National Concessionaire do(es) not make the Declaration of Marginal Discovery on the Qualified Marginal Zone; this term can be extended by the same period;

- (b) After the Declaration of Marginal Discovery, the operator does not present the General Development and Production Plan to the Ministerial Department supervising the petroleum industry, within the statutory period.
- 2. Except for concessions under an association contract, the expiry of the Declaration of Marginal Discovery request entails the immediate and automatic reversion of such discovery to the State.

CHAPTER IV

FINAL PROVISIONS

Article 19

(Subsidiary regime)

To the extent it does not contradict it, the general legal regime provided for in the Petroleum Activities Law n° 10/04 of November 12, in Law 13/04 of December 24 on Taxation of Petroleum Activities, in the ancillary legislation and in the concession decrees shall apply on a subsidiary basis to the special legal regime defined in this statute.

Article 20

(Repeal)

Presidential Legislative Decree n° 2/16, of 13 June 2016, as well as all the legislation contrary to this statute, is hereby repealed.

Article 21

(Doubts and omissions)

The doubts and omissions arising out from the interpretation and application of this Legislative Presidential Decree shall be resolved by the President of the Republic.

Article 22

(Entry into force)

This statute comes into force on the date of its publication.

Reviewed by the Council of Ministers, in Luanda on 28 February, 2018.

Be it published, The President of the Republic, João Lourenço.