# AN ANALYSIS OF THE EFFICACY OF UGANDA'S PETROLEUM FISCAL REGIME IN ATTRACTING AND RETAINING INVESTORS IN UGANDA'S OIL AND GAS SECTOR

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**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A MASTER OF LAWS OF OIL AND GAS AT THE INSTITUTE OF PETROLEUM STUDIES KAMPALA IN AFFLIATION TO UCU.**

**OCTOBER, 2020**

## DECLARATION

**I, WASSWA ADAMS,** do hereby declare that this research report is entitled An Analysis of the Efficacy of Uganda's Fiscal Regime in Attracting and Retaining investors in Uganda's Oil and Gas sector is entirely my original work, except where acknowledged, and it has never been submitted to any other University or any other institution of higher learning for the award of a Degree. I also certify that this Dissertation was particularly prepared by me for the partial fulfilment for the award of Masters of law in Oil and Gas of Uganda Christian University.

**SIGNATURE**……

**DATE**……...

**APPROVAL**

This is to certify that this Dissertation entitled An Analysis of the Efficacy of Uganda's Fiscal Regime in Attracting and Retaining investors in Uganda's Oil and Gas Sector has been done under my supervision and now it's ready for submission.

**SIGNATURE**……

**NAME. RUTARO ROBERT.**

**DATE**……21/11/2020

## DEDICATION

This dissertation is dedicated to my mother, Ms Mariam Nakyanzi my wife, Mrs Namirembe Hairaat Adams and my children Bukenya Imran, Namuwonge Rahiimah, Hanisa Nakyanzi, Matovu Abdul Rahim and Rayyan Muwonge. This research deprived you of some of the time you would have spent with me.

## ACKNOWLEDGEMENT

I thank the Almighty God, the source of knowledge and wisdom for having seen me through my studies, having been able to fund my education and enabling me to undertake my research successfully. Am grateful to the Office of the Director Public Prosecutions for sponsoring me.

I extend my deep appreciation to my supervisor Mr. Rutaro Robert, a lecturer at Faculty of Law, Uganda Christian University for his full support, guidance and advice provided during the study that made it possible for me to successfully complete this report.

I also acknowledge the contribution of my learned colleague Joseph Muhumuza Kaahwa who availed me with reading materials and space. May the Almighty God bless him.

I wish to express my sincere gratitude to all those who made tremendous contributions to this study; my friends especially Kakunguru Eutas my colleagues at the Institute of Petroleum Studies whose encouragement and moral support were vital towards the completion of this study.

May Almighty Lord bless you abundantly.

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## LIST OF ACRONYMS.

| | |
|---|---|
| AICPA | American Institute of Certified Public Accountants |
| APT | Added Profit Tax. |
| ADB | African Development Bank. |
| BOU | Bank of Uganda. |
| BT | Brown Tax. |
| CGT | Capital Gains Tax. |
| CIT | Cooperate Income Tax. |
| CAEW | Chartered Accountants of England and wales. |
| CNOOC | China National Offshore Oil Company. |
| DMO | Domestic Market Obligation. |
| DRC | Democratic Republic of Congo. |
| FDI | Foreign Direct Investment. |
| FCI | Foreign Company Investments. |
| G.D.P | Growth Domestic Product. |
| GRMP | Gas Revenue Management Policy. |
| ITA | Income Tax Act. |
| IOCS | International Oil companies. |
| MPSA | Model production sharing agreement. |
| NOC | National Oil Company. |
| NOGP | National Oil and Gas Policy. |
| OECD | Organisation of Economic cooperation and Development |
| PSC | Production Sharing Agreement. |
| PITL | Petroleum Income Tax Law. |
| PSA | Production sharing Agreement. |
| MPSC | Model production sharing contract. |
| RRT | Resource Rent Tax. |
| TA | Tax Abatement. |
| RUTR | Renegotiating and updating Tax Regime. |
| VAT | Value Added Tax. |

## ABSTRACT

A country's ability to attract international oil companies in the Oil and Gas sector largely depends on the efficacy of the Fiscal Regime. A formidable, attractive and competitive Fiscal Regime is key to both host state and the International Oil Companies. It's a converging arena of interests which may overlap because each may struggle to advance its interests, owing to the fact that some of the developing countries although blessed with Oil and Gas resources lack capital, technology, and human resource needed in the in the industry. It therefore becomes an inevitable venture for them to harness the resources with the involvement and contribution of foreign investors. Therefore, the only option is to attract and retain investors through a favourable fiscal regime.

This study examined whether Uganda's fiscal regime is attractive, effective or repulsive to investors in Ugandan's Oil and Gas sector. The study analysed foreign investment in the Oil and Gas sector with the view of assessing the fiscal instruments that are applied to attract foreign investments in the Oil and Gas sector .The main fiscal regimes which have been developed include production sharing agreements, concessions , service Agreements and also analysing petroleum legal regime and how it affects investments decisions and at the sometime how it can be used to boost investments in the Oil and Gas sector .The study analysed the sustainability of Uganda's fiscal regime by measuring neutrality, stability flexibility risk sharing and equitable aspect of measuring the efficacy of the petroleum regime in attracting and returning investors in the petroleum sector.

The study also compared Uganda's fiscal regime with other Oil frontiers Like Norway, Ghana and Kenya but a positioned was taken to taken to the effect that no country's conditions are the same and attempts to replicate the fiscal patterns of one state in another will invariably fail but a study of other regimes can provide lessons, good practices and standards

The study recommends that Petroleum Fiscal Regime should reflect the actual conditions on the ground. For it to effectively be implemented and achieve its objectives, the geological perceptivity of a given area, technical competencies, infrastructure development, and the environment should be favourable. It should therefore be designed to reflect flexibility, neutrality and stability if sustain government's desire to maximise revenue over short and long run, and above all sustaining investment through balancing government interests and those of international oil companies to ensure that both the government gets what is due to it in taxes

and at the sometime retaining and attracting investors in the sector. The regime should be internationally competitive to reflect the risks inherent in the petroleum sector relative to other sectors. Therefore, the fiscal regime should be able to respond and strike a balance between the desire by the host government to maximise revenue from the hydrocarbons and the need by oil majors to maximise profits from their investment in the oil and Gas sector.

# CHAPTER ONE.

# GENERAL INTRODUCTION.

## 1.0 INTRODUCTION.

### 1.1 General introduction.

Efforts to find oil in Uganda Started as far back as the 1980s. However, the initial efforts were not successful in establishing commercially viable deposits in the country. Renewed and consistent exploration efforts commenced in 1980 which culminated into confirmation of commercially viable oil in 2006[1] . The companies currently licenced to explore, develop and produce petroleum in Uganda are, China National offshore Oil cooperation Uganda ltd, Total and Total E& P[2]. The objectives of governments and investors in the Oil and Gas sector differ but similarities lie in their desire for higher revenue from the project and the main factor which differentiates the objective is Taxation, which as a result each party to the sector matrix wants to maximise rewards and shift risk as much as possible to the other.

In the Oil and Gas sector, the host government and the investors have many options at their disposal to share the value of these hydro carbons. These tools make what is known as a Fiscal Regime[3] .Royalty, Signature Bonus, and corporate income Tax, Production Bonus are some of the tools applied in Uganda's Oil and Gas sector.

Most countries experience inadequate investment in most sectors of their economies due to the fact that their Petroleum Fiscal regime is uncoordinated coupled with poor economic fiscal policies and unattractive investment incentives hence attracting inadequate investment from international oil companies[4]. Inadequate investment in the sector is more pronounced in Africa especially in most Sub-Saharan African countries like Uganda, Kenya and Tanzania. The same obtains in parts of Asia like Kuwait, Iran, Iraq, as well the Latin America countries of Venezuela, Columbia and Brazil[5].

[1] The Oil & Gas sector Uganda: Frequently asked questions .Ministry of Energy and Development, December 2014.
[2] Ibid
[3] Boykett .T.et al(2012) Oil Contracts .How to read and understand them .Times up Press P.73.
[4] *Bryan Land, capturing a fair share of fiscal benefits in the extractive industry. UNCAD.Org*
[5] *World Bank report on extractive industry. Analysis of the oil sector. Vol.2 of 2019*

Oil and Gas resources significantly contribute to government revenue of many countries and if properly utilised can hugely impact on their prosperity and economic development.[6]

Examples of countries with limited investments in oil and Gas include Iran that has vast quantities of oil reserves but suffering from low investments despite having a lot of hydrocarbons.[7]. The main goal of Uganda's Oil and Gas policy is to use oil and Gas resources to contribute to early achievement of poverty eradication and creation of everlasting capital.

In the contemporary world where attracting foreign investment is very critical to most economies that are in need of solving challenges of low investments such as unemployment and poverty , countries that have natural resources like Oil and Gas are faced with the dilemma of maximising revenue from their extractive sectors as a way of funding their budget deficits. These countries tend to attract investments through offering incentives to investors in the Oil and Gas sector. Therefore, an effective petroleum fiscal regime is very critical if these countries are to succeed in attracting the much needed foreign investment in this sector.

In Uganda, hydrocarbons are located in very remote areas and accessibility to petroleum markets is very costly due to the fact that Uganda is a land locked country. This coupled with the fact that Petroleum exploration is capital intensive with price volatility, political, geological and commercial risks, makes the petroleum sector of Uganda undesirable to investors.

It follows that, in order to attract foreign investment, the country has to put in place a formidable, competitive and attractive petroleum fiscal regime with good incentives to mitigate the risks attributable to the sector. The structure and form of fiscal regime should strike a balance between not giving away too much and failing to raise adequate revenue to enhance development objectives and being too stringent to stifle off and scare off potential investments.

The challenges to a good tax design, however, are immense, both in the technicalities of dealing with the distinctive features of resource activities and in coping with the interplay between the interests of powerful stakeholders.[8] The National Oil and Gas Policy for Uganda 2008[9] plays an important role in economic growth through revenue generation for the government. However, oil prices have been relatively low at times due to the increase in global

[6] *Carol Nakhle, Petroleum, Sharing the oil wealth, a study of petroleum taxation yesterday, Today and Tomorrow (London, Rutledge, 2008) 149-150.*
[7] *USA Treasury Department acting under the USA sanction acts of Iran and Venezuela of 1979 and 2006.*
[8] *Leeper, Eric M (1991). Equilibrium under active and passive monetary and fiscal policies, Journal of monetary Economics 27.1 129-147.*
[9] *The National Oil & Gas Policy (2008).*

petroleum supply which has outweighed demand. This fall in oil prices greatly affect petroleum investors in the Oil and Gas sector due to the large amount of capital invested in exploration activities.

Therefore, ensuring an effective and attractive petroleum fiscal regime is vital but challenging in some developing counties. Myanmar is a country where the petroleum fiscal regime has worked well[10] .

This introductory chapter will encompass the following; the background information of the study, the Problem Statement, the Research objectives, the Research questions, Scope of the study, the Justification of the study, and the Conceptual Framework.

**1.2 Background of the study.**

The presentation of the background is based on Amin who puts emphasis on the discussion of the Theoretical, Historical, Conceptual and Contextual Background of the Study. Uganda is a resource rich developing country with estimated proven natural gas and oil reserves of 500 Billion cubic feet and so far with 6.5 billion barrels respectively. As in many developing countries, petroleum exploration in Uganda is mainly carried out by overseas investors African Development Bank (ADB)

**1.3 Historical Background of the Study**

The History of foreign investments dates back to many centuries of business endeavours. Capital flow investments outside national boarders first began as an individual activity which involved only the activities of family business and it was later followed by economic entities in the companies of model sizes which grew into international large multinational corporations[11]. However, in Uganda, foreign trade is traced back to the period before the coming of the British colonialist. Kingdoms like Buganda and Bunyoro used to trade with each other and other entities and even in the long-distance trade[12]. In today's Uganda, there are many efforts aimed at attracting more investments in the country and this among others informed the creation of the Uganda Investment Authority. Investments in Oil and Gas were started by the

[10] Wint Thiri Swe and Nnaemeka Vincent Emodi [10] Journal of Risk and financial management 21 11,5doi:133/jrfm1145.
[11] *Mira Wilkins, the history of foreign investment in Europe 1992.*
[12]*Rwakakamba M & Lukwaga D (2013) Farmers in Uganda's oil economy, deal or no deal , Kampala, Uganda , Agency for Transformation*

Rockefeller family in 1870s after the discovery of oil which was used to create the Standard oil company[13]. Fiscal regimes and Price stability inform investor decisions .It is one of the reasons why during the period of high oil prices, the investors tend to focus on the country's fiscal regimes with regard to the valuation of Oil and Gas exploration and production[14]. An effective and attractive petroleum fiscal regime is vital but challenging in some developing counties.[15]. Theoretically, all economies regard capital as the driving force for the society's economic growth and development. On that principle, in societies without adequate capital for domestic development, resorting to foreign capital is a must for economic development. Domestic investment and attracting foreign capital in Oil and Gas sector are among the ways of resolving lack of capital in developing countries aimed at relieving people from poverty. This is done through many ways and this include putting in place a fiscal policy that caters for both the interests of the host government and international oil companies.

An important aspect of explaining aggregate investment behaviours is to infer to what extent it is driven by industry variables such as the costs, technology, and host government policies towards the companies, and to what extent it's being driven by macro variables. In the corporate world, Investment in the corporate world. Oil and Gas sector has largely followed the rest of the country to the rest of the economy.[16]

Foreign investment refers to funds or physical capital transfer from a country to another to be used in funding economic activities. Resource rich Countries strive to attract foreign investment due limited capital, technology and skilled manpower in the oil and gas sector. Uganda like many other countries in the developing world also faces challenges of attracting and retaining investors in the oil and gas sector. However, it is difficult to attract and retain investors in the Oil and Gas sector with highly volatile prices and increasing stringent environment regulations in the oil and gas sector. Resource rich countries face many challenges which includes, reduced costs which lowers investor's interests, reduced performance of its industrial base assets and increased environmental regulations, and reduced revenues due to unfavourable fiscal regime.

[13]*Mira Wilkins, the history of foreign investment in Europe 1992.*

[14]*Carol Nakhle, Petroleum, sharing the oil wealth, a study of petroleum taxation yesterday, today and tomorrow (London, Rutledge, 2008) 149-150.*

[15] *African Development Bank Report maximizing the benefits from Africa's Oil and Resources.*

[16] Abel .A and j.c. Eberly, Model of Investments under uncertainty American Economic Review, 84, 369; 1364.

The sector also has challenges which include, governments putting people's interests normally put people's after profits as countries will strive to achieve foreign investments which creates unfavourable bargaining between the government and international oil companies, Poor negotiated Agreements due to pressure from the investors due to need for adequate investments in the oil sector, Political risks, limited manpower, unfavourable land tenure system that makes it hard for the investors and the host government to acquire needed land for investments which attract high compensation expenditure to settle citizens occupying land harbouring hydro carbons.

The fiscal regime must therefore be designed address the challenges and effectively reflect flexibility, neutrality and stability if it is to sustain government's desire to maximise revenue over short and long run. Besides, sustaining investment through balancing government interests and those of international oil companies require ensuring that both the government gets what is due to it in taxes and at the sometime retaining and attracting investors in the highly volatile and capital intensive sector. The regime should be internationally competitive to reflect the risk profile inherent in the petroleum sector relative to other sectors. Therefore, the fiscal regime should be able to respond and strike a balance between the desire by the host government to maximise revenue from the hydrocarbons and the need by oil majors to maximise profits from their investment in the oil and Gas sector.

Therefore, it is vital to ensure that the petroleum fiscal regime is attractive to petroleum investors through reforms that will lead to economic growth. In the inevitable relationship between governments and the oil industry, two broad systems of granting rights to investors have developed over the years: that is, the concessionary system and the contractual scheme which are essential in the formulation and design of the fiscal regime .According to Phillp D, Michael K and Charles M.C. Pherson [17] Petroleum fiscal regimes are sets of laws, regulations, and agreements in a country which govern the benefits derived from petroleum exploration and production.

This is the converging arena between the host government as the political entity and the international oil company as the legal entity in the transaction. The petroleum fiscal regime sets a standard for the production of Oil and Gas as well as the income allocation between these

[17] *Philip D, Michael K and Charles Mc Pherson. The Taxation of Petroleum and Minerals. Rutledge Taylor and Francis e-Library 2010 page 93.*

two entities. The petroleum fiscal regime is important to the government because it ensures the appropriate management of the country's natural resources. To the petroleum investors, Petroleum Fiscal regimes influence their investment decisions in a country of interest.

However, oil in Uganda and investments in the oil sector has history that goes back to the late 19th century when local communities discovered oil seepages in the Albertine region[18]. Such finds were documented by Emin Pasha in 1877 and by British colonial administrator and explorer F. Lugard in 1890, the latter being quick to declare ownership of them. In the 20th century, exploration was erratic and hindered by geopolitical events.[19]

In the early 1920's there was significant oil exploration in Waayland was done in which substantial amounts of hydrocarbons were traced in the Albertine Graben[20].This discovery was later to be followed by the first ever drilling of wells in 1938.Further, exploration was carried in the 1940's and 1950's and several shallow wells were drilled mainly for stratigraphic purposes[21]. However, oil activities were disrupted by political turmoil that ravaged the country between 1966 and 1980 until the 1980's when aeromagnetic data across the entire Graben region was obtained. The aeromagnetic surveys carried out during 1983 and 1992 produced a ray of hope that indeed Uganda had prospects of more oil reserves.[22]

In the Albertine Graben[23] region in 1985, it became obvious that the 1985 petroleum (Exploration and production) Act of Uganda was enacted in order to guide government in levying taxes and also in guiding of further oil exploration in the country.

In 2011, Parliament imposed a moratorium on the signature of new contracts until the requisite legal framework was put in place. Secondly, the government did not want to proceed to the production stage without agreement on a large refinery. Therefore, Uganda embarked on the development of legal and policy frame works to facilitate coordinated exploitation. As such, the National Oil and Gas policy of 2008 was put in place[24], following shortly in 2012, the Oil

*[18]Rwakakamba M & Lukwaga D (2013) Farmers in Uganda's oil economy, deal or no deal, Kampala, Uganda, Agency for Transformation*
*[19] Bassam Farrouh , Hardbargaining and complex politics in East Africa , the Oxford Institute for Emerging studies , October, 2015.*
*[20]E.Kasimbazi. (2016), Legal and Environment Dimension of oil exploration in Uganda.*
*[21] E.Kasimbazi. (2016), Legal and Environment Dimension of oil exploration in Uganda.*
*[22] Sebastian Wolf & Vishal Aditya Potluri, Uganda's oil, how much, when and how it will be governed, WIDER Working Paper 2018-179 December 2018, united Nations University Institute for Development Economic Research.*
*[2323]Carol Nakhle, Petroleum, sharing the oil wealth, a study of petroleum taxation yesterday, today and tomorrow (London, Routledge, 2008) 149-150.*
*[24]Uganda national oil and gas policy.*

and Gas Revenue management policy was launched. In 2013, the petroleum (Exploration Development and Production) Act,[25] and the petroleum (Refining, Conversion, Transmission and Midstream storage) Act,[26] Incomes Tax Act as amended by 2019, VAT Act as amended, the petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations 2016, National oil content Regulations of 2016 were also enacted prior to passing and enactment of these policies and laws.

Uganda adopted a model Petroleum Sharing Agreement (PSA) in 1999, 2012 and another model PSA in 2016 [27]to guide on the duties and roles between the international oil companies and the Ugandan government which were supported by these Acts. These Acts also established the Petroleum Authority of Uganda (PAU) as the regulatory body and designated the Uganda National Oil Company (UNOC) to manage the government's commercial interest in the sector. Formulated with Norwegian support, the two Acts formed the legal basis for the development of upstream and midstream capacity. In the same year, the Ministry of Finance approved an Oil and Gas Revenue Management Policy. This provided an important signal that the government intended to put in place a prudent governance framework to manage the expected revenue and also to put up policies that were aimed at influencing more investments in the petroleum industry. Consequently, the government also passed the Public Finance Management Act in 2015[28].

This was a landmark legislation that included provisions on the management of oil resources and gave birth to the Charter for Fiscal Responsibility, the Petroleum Revenue Fund, and the Petroleum Revenue Investment Reserve and this proved that the government wanted a taxation policy regime that could influence more investments into the petroleum industry of Uganda.

Like most governments, Uganda has also been compelled to focus on the tax systems so as to maximize its revenue productivity from its Oil and Gas sector. Similarly, most investors find ways to increase profitability and progress on their corporate strategies. These countries are reconciling their conflicting objectives by depending on fiscal systems so as to achieve their economic goals since investors seek to invest in countries which have a stable legal and fiscal system[29]. Therefore, Uganda also formulated a taxation policy which is aimed at to attract more

[25] *Act No.4 of 2013 (parliament of Uganda).*
[26] *Supra 6*
[27] *Uganda production sharing Agreement of 2016.*
[28] *Financial Management Act of 2015*
[29] *International monetary fund, fiscal department of 2012. Fiscal regimes for extractive industries, Design and implementation.*

investments in its newly created sector.

Therefore, an effective taxation fiscal regime is necessary for promoting sustainable financing in the oil and gas sector through attracting more investment in oil and gas sector since such will empower both parties to achieve their objectives and also to promote more sustainable financing in Uganda's oil and gas industry through attracting foreign investment.

However for the government to achieve the goal of attracting more investment in the oil and gas sector, it had to first manage the varying relationships between governments and the oil industry, two basic and broad systems of granting rights to investors have developed over the years, that is; the concessionary system and the contractual scheme which help in designing the fiscal regime.[30] Petroleum fiscal regimes encompass taxation, contractual framework, and State participation and bonus payments, Allowances and many other mechanisms necessary for the state to effectively manage its petroleum sector since Fiscal regimes are the principal system for sharing hydrocarbon wealth between host government and investors. Both governments and oil companies want to secure 'fair' shares of the oil proceeds.[31] This can be achieved through design of effective fiscal regime, which takes into consideration different stakeholders' interests and is attractive for investors when it comes to promoting sustainable financing in Uganda's oil and gas sector.

The outcome is then mutually beneficial, with both the government and investors sharing the rewards and enjoying a more sustainable long-term relationship[32]. If fiscal terms are too general, government returns are weakened and this could plant the seeds for an adverse reaction towards investors. If the terms are too tough, the incentives to the oil companies to invest in exploration, development and production can be severely damaged with the result that investment flows to countries offering a more attractive fiscal regime[33]

## 1.4 THEORETICAL PERSPECTIVE OF THE STUDY.

Foreign direct investment as a concept has ancient roots and it has witnessed significant

*[30] Philip D, Michael K and Charles Mc Pherson. The Taxation of Petroleum and Minerals. Rutledge Taylor and Francis e-Library 2010 page 93.*
*[31] Philip D, Michael K, and Charles Mc Pherson, the Taxation of Petroleum and Minerals. Rutledge Taylor and Francis E-library 2010 page 93.*
*[32] Ivan Marten, Philip Whittaker and Avaro Martinez de Bourio 2015. Government Take in Upstream oil and Gas, Framing a more Balanced Dialogue 5th December 2015.*
*[33] Steven, Ossowski, R, Daniel, J, & Barnett, S. Stabilization and savings funds for nonrenewable resources. Experience and fiscal policy implications. Fiscal policy formulation and implementation in oil producing countries, 273-315 (2003)*

development in its forms over history (Wilkins, 1970). The economics literature suggests that FDI can be explained through different theories, each theory has its own pros and cons from other theories' prospective. These theories have been emerged in a certain social, economic, and political conditions which formulated their core assumptions. The literature also suggests a number of determinants affect FDI inflows toward a specific country over another such as natural resources, market size, exchange rate, inflation, and institutions and so on

This study was guided by the Dunning theory which establishes the existence of certain company's advantages from the interaction with the country that should be taken into account before investment decisions.

This theory was propagated by Dunning in 1977 as theory explaining the importance of offering an effective petroleum fiscal regime as a way of attracting investments in countries that are less developed through creating conditions for investors that will increase their appetite for investing in such countries .these may take the form of offering tax incentives and also improving the countries investment climate. The Dunning model was criticized because of the inability to illustrate why some factors are more important than others during decision-making However, this model is recognized as the most overarching theory of FDI determinants. The Theory and empirical data allocate political and economic factors as the two basic groups of factors affecting these benefits

Globally, countries especially those in the developing world often tend to incorporate numerous tax incentives in their petroleum fiscal regime as a way of attracting investors to come and investor in their critical sectors of their economies and Uganda is not an exception. Since the country is on the age of starting to produce its own oil, it was vital for the country to design an effective petroleum fiscal regime that will attract more investments in the oil and gas sector. And such incentives were offered as a way of attracting more investments in the country through an effective petroleum regime and also to encourage foreign direct investments in the country.

Uganda like many other developing countries is expected to attract more investments in oil and gas sector and it has taken drastic measures through offering creating an effective petroleum fiscal regime that will cater for the interest of the investors so that they can be able to re-invest in the country and also to attract more investments through offering investment incentives to investors as a way of attracting more investments into is oil and gas sector. In the study carried by the IMF in 2017, its described and characterized the phenomenon of encouraging foreign

investment through an effective petroleum fiscal regime which does not discourage investors from the country through creating an effective petroleum fiscal regime that caters for the investors interests and also lowering down them numerous taxes that leaves them with less appetite and profits to reinvest in Uganda oil and gas sector.

### 1.4.1 Conceptual Perspective of the study

The Conceptual perceptive was informed by fiscal petroleum regime policies of Uganda that promotes an effective petroleum fiscal regime aiming at attracting investments in the Oil and Gas sector through formulating policies that limit over taxation on investors as a way of attracting investors in Uganda's Oil and Gas sector. These polices may take a form of Tax allowances and tax incentives as a way of encouraging more investments in the Oil and Gas sector.

For the purpose of the study, the Researcher concentrated on analysing the effectiveness of Uganda's Petroleum Fiscal Regime in attracting investors in Uganda's Oil and Gas sector. The study sought to establish whether Uganda's petroleum fiscal regime is effective enough to attract investors in Uganda's Oil and Gas sector. In the study, the researcher will specifically handle the effectiveness of Uganda's petroleum fiscal regime in attracting investors with regard to encouraging investments in Uganda's Oil and Gas sector.

The generalized use of tax incentives has been justified by the need to: (i) correct market inefficiencies associated with the externalities of certain economic activities; (ii) target new industries and mobile investments that are subject to tax competition; (iii) generate a form of agglomeration economies, or concentration of externalities and (iv). Subsidize companies during their downturn. As a matter of fact, developed countries normally use tax incentives to promote research and development activities, export activities and support the competitiveness of their enterprises in the global market; while developing countries use them to attract foreign investment and foster national industries.

For this reason, the theoretical positive effect of tax incentives has been questioned and thus some governments have used different models, such as the computable general equilibrium (CGE) model, to conduct a cost-benefit analysis focused on their economic and revenue impact. This could ensure that a tax incentive program is worth pursuing and clear policies and laws delineating its scope, requirements and administration might be needed.

Developing a country's natural resources can provide a significant boost to economic

development for a country. Planned well, and implemented with care, natural resource development can provide revenues and other economic benefits to a country and its citizens. Special considerations are required when a country agrees to natural resource development since such resources are finite thus the country needs to be especially careful that it obtains the maximum benefit from the "onetime" extraction of such natural resources. From an investor standpoint, extractive industry investment also has special considerations from regular investments: while the resources are finite, their extraction and development are risky and very capital intensive, with particularly large investment required at the "front end" of the project life. The business often requires specific expertise and generally involves a long lead time into profitability.

Countries embarking on natural resource development will seek to find a balance between achieving a maximum benefit for the country while providing investors with a return on their investments commensurate with the risks taken. Resource holders should set up clear rules on how to secure an appropriate government share from these finite resources and while it is difficult to provide guidance that applies equally in all circumstances, there are a number of general considerations that are relevant when designing and implementing extractive fiscal systems around the world. This will ensure an effective petroleum fiscal regime that will attract investors in Uganda's Oil and Gas sector.

### 1.4.2 Contextual perspective of the Study.

Uganda is found in East African region. Uganda is like many other countries in Africa that are endowed with natural resources in particularly oil and gas but with limited foreign investments in the sector since it's a developing country .

This phenomenon particularly as an investment issue is closely related to a number of issues such unfriendly taxation regime and undesirable fiscal instruments applied in the Oil and Gas sector.

Risks involved in the industry and the need for Uganda to finance its budget deficit given the fact that Uganda is a developing further compounds the problem. Therefore, Uganda needs a fiscal regime and taxation policy which is more friendly and attractive to investors if the country is to achieve maximum investments in the sector.

In order for Uganda to interest more investors in the Oil and Gas sector, Uganda needs an effective petroleum fiscal regime that aim at attracting more investments through popular tax

policies that favours more of the investors other than those fiscal policies that scares away investors from investing in the Oil and's Tax regime which should offer a series of tax incentives to investors as a way of encouraging more investments in Uganda's oil sector. Therefore the answer is to create an effective petroleum fiscal regime that is attractive to investors in the sector. Lack of a competitive fiscal regime the economy especially in the Oil and Gas sector explains why Uganda up to now has not kicked its oil production more than 13 years after the discovery of commercially viable reserves of hydrocarbons in 2006 because of limited investments in the oil and gas sector.

Its worth to noting that Uganda currently has a wide range of measures that have been taken to improve the investments climate in Uganda .These can include, reducing on the tax burdens from the investors, improving infrastructure development and also offering tax incentives among others that are offered to investors in different sectors in the economy. In the Oil and Gas, they might take the direction of tax deductions, tax holidays, tax credits, state participation, tax waivers and many others. Uganda's fiscal regime's objective is to allow the government to maximise its revenue and at the same time cater for the interests of the investors by offering investors various forms of incentives as a way of encouraging them to invest in the Oil and Gas sector and other sectors of the economy. The key stakeholders in this drive are the host government, URA, UIA and the Parliament of Uganda who are by law under per Article 157 of the 1995 constitution of the Republic of Uganda as amended who have capacity to grant certain waivers to investors.

However, in the light of the above, it's important to draw lessons from other jurisdictions on how they have been able to deal with the issues of the tax incentives and how their countries have gained from offering numerous incentives to investors in their Oil and Gas sector. Uganda is ranked to be among the countries that are less favourable for investments because of the unfavourable fiscal taxation regime due to its heavy taxes, corruption, poor infrastructure, limited human skills as per the report of Transparency international of 2018.

The report indicated that Uganda is the most corrupt country in East Africa followed by Kenya. This makes it hard for foreign investors to invest in such a country that is infected with corruption and hence lowering the levels of investments despite the availability of tax incentives offered to investors due to such damming report by Transparency International.

From the above evidence, the Government needs to remove barriers and bottlenecks to investments in the country by looking at other factors that have hindered investments in the Oil

and Gas and other sectors of the economy. These may include wiping out rampant corruption in the economy, Good political will and political stability in the country. If these issues are adequately addressed, investments in Uganda's Oil and Gas sector will increase. It's also prudent for the government to design fiscal policies that are necessary for attracting foreign investments since Uganda's fiscal regime only aims at maximising revenue for the government as a way of financing its tax deficits.

Therefore, the foundation upon which this study is built is the fact that despite the immense effort by the government to attract investors through creating a petroleum Fiscal Regime that intended to cater for the interests of the investors through offering the tax incentives, wiping out rampant corruption in the country, improving on the quality of infrastructure in the country as a way of boosting foreign investments in Uganda's Oil and Gas sector, the sector is still less developed and in dire need for more investments in Uganda if the country is to fully achieve its full potential. The study seeks to explore why the use of incentives in the oil and Gas sector has hardly had an impact in encouraging more investments in Uganda's Oil and Gas sector.

The effectiveness of Petroleum Fiscal Regime in attracting investors remains one of the unsettled concepts in foreign investment attraction in Uganda. The researcher qualitatively analyses results with regard to attracting foreign direct investments in the oil and gas sector through offering more friendly investments policies as a way of encouraging more investments in the sector.

**1.5 STATEMENT OF PROBLEM.**

In order to encourage more foreign investments, the government of Uganda introduced a set of tax reforms and measures in the Oil and Gas sector which include, tax incentives like offering free land and tax exemptions to investors, and many others as a way of encouraging more investments in the Oil and Gas sector. This explains the standoff between Tullow and Uganda Revenue Authority over the Capital Gains tax of over 950 million dollars that has prompted Total to withdraw from funding the Oil Pipeline from Uganda to Tanga Port in Tanzania. Despite the efforts by Government including Tax incentives to investors foreign investment in the Oil and Gas sector is still very low with some international companies even farming out.

A study carried out by the Uganda investment authority and the Uganda Bureau of Statistics revealed that in East Africa, Uganda still lags behind in attracting foreign direct investment among the founding members of the East African Community. The study revealed some of the bottlenecks that include rampant corruption, poor infrastructure development, and lack of

political despite the verbal commitments. Other hindrances that lessen the country's investments climate. This is testimony that Uganda's Fiscal Regime is not efficient enough to attract investments in the Oil and Gas sector. Therefore, this study seeks to examine the appropriateness of the tax incentives and other components of the fiscal regime in attracting more investments in Uganda's Oil and Gas sector.

## 1.6 PURPOSE OF THE RESEARCH.

The main purpose of the Study is to establish the efficacy of Uganda's Fiscal Regime in attracting and retaining investors in Uganda's Oil and Gas sector.

## 1.7. OBJECTIVES OF THE STUDY.

These objectives are divided into main and specific objects of the Study

### 1.7.1 Main Objectives of the Study

The general objective of this study is to examine the efficacy of Uganda's Petroleum Fiscal Regime in attracting foreign investors in Uganda's Oil and Gas sectors

### 1.7.2 Specific Objectives of the Study

To identify the existing Fiscal Regimes applicable to the Oil and Gas sector.

To find out the impact of the Fiscal Regimes on the host country and the International Oil Companies.

To examine the effectiveness of the Fiscal Regimes in relation to attracting and retaining investors in Uganda Oil and Gas sector.

To analyse the Fiscal Instruments applied to attract investments in Uganda's Oil and Gas sector.

### 1.7.3 Specific Research Questions

(i) What are the existing fiscal regimes in the Oil and Gas sector?

(ii) What is the impact of Fiscal regimes on the host country and the International Oil companies? "

(iii) How effective are Fiscal regimes in attracting and retaining investors in the Oil and Gas sector?

(iv) What are the Fiscal Instruments used to attract investments in Uganda's Oil and Gas Sector?

### 1.8. Scope of the Study

The scope of the study was divided into three perspectives, these include Content, Time and Geographical.

#### 1.8.1 Content Scope

The focus of this study was Oil and Gas industry in the Republic of Uganda. It is limited to the taxation of Oil and Gas activities in the upstream sector. It reviews the characteristics of an ideal taxation system and the extent to which they are incorporated into Uganda's petroleum Fiscal Regime. This study concentrated on the efficacy of Uganda's Fiscal Regime in attracting investors in the Oil and Gas sector and the mechanisms through which it balances the conflicting objectives of the Government of Uganda and Oil majors.

The content of this study focussed on examining the efficacy of Uganda's petroleum fiscal regime in attracting investors in the Oil and Gas sector through encouraging foreign direct investments in Uganda's Oil and Gas sector and specifically by offering tax incentives and the bottlenecks to the implementation of this fiscal regime including , corruption ,poor infrastructure , lack of plausible fiscal taxation framework Tax and many others and the factors that hinder investments in the Oil and Gas sector in Uganda and reasons why despite the efforts made by government , Uganda's petroleum fiscal regime has failed to encourage more investment in Uganda's Oil and Gas industry.

Although there are several criteria of evaluating the Efficacy of a fiscal regime, this study will be limited to only four, because every investor, depending on his interest, will have unique preferences. These criteria may be either be quantitative or qualitative while some cut across. This study concentrates on the qualitative measures of assessment. It builds its framework on the principles of a robust taxation system, like, neutrality; certainty and transparency, Government take and risk sharing around the concept of economic rent.

The study assessed the Efficacy of Ugandan fiscal regime in attracting foreign investments in Uganda's Oil and gas Sector. The study will also focus on the fiscal instruments that helps in attracting investors in Uganda's Oil and Gas sector and also whether Uganda's Petroleum fiscal regime is sustainable to investor in a long-term.

The study aimed at looking at the companies that intend to invest in the Oil and Gas sector in the whole of Uganda. The oil that has been discovered in Uganda is about 6.5 billion barrels and the recoverable oil is about 1.8 to 2.2 barrels of oil. [34] The investment opportunities are quiet many ranging from transportation, road construction, welding, real estate, mechanics and maintenance of machinery laundry and catering.

### 1.8.2 Time Scope

This study took a span period of 10 years considering the time period from the year 2009 to 2019. This period was used because of the availability of good quality and reliable data relevant to the topic under investigation since there has been many changes in Uganda's fiscal petroleum regime.

This time frame will help the researcher to analyse the efficacy of Uganda's petroleum fiscal regime in attracting investors in its Oil and Gas sector and study how fiscal policies have been developed in the Oil and Gas industry of Uganda today as a way of promoting and attracting Foreign Direct investments in the Oil and Gas industry of Uganda

### 1.8.3. Geographical Scope.

This study was carried out in Uganda since the study will focus on Uganda's as country in terms of assessing its oil and Gas industry. Uganda is found in East Africa Neighbouring Kenya in the East, Tanzania in the south, and D.R. Congo in the west, South Sudan in the North and Rwanda in the south Western part of East Africa. It located in the heart of Africa in the central sub-Saharan region of Africa. Its Oil and Gas fields are located near the part of Uganda and D.R. Congo.

It's reported that Uganda has a population of about 42 million people as according UBOS 2018 estimates in its statistics. The report indicated that most of the Ugandans youth and about 80% are unemployed there by creating a need for more investments as a way of creating more jobs for the youth through encouraging more investments in the Oil and Gas sector.

The study aimed at looking at the companies that intend to invest in the Oil and Gas sector in the whole of Uganda. The oil that has been discoverer in Uganda which is about 6.5 billion barrels and the recoverable oil is about 1.8 to 2.2 barrels of oil. [35] The investment opportunities

[34] *oil in uganda < https://www.oxfordinstituteforenergystudies.org > accessed on 26 September 2019*
[35] *oil in uganda < https://www.oxfordinstituteforenergystudies.org > accessed on 26 September 2019*

are quiet many ranging from transportation, road construction, welding, real estate,

### 1.9 Significance of the Study.

**i. To the Researcher.**

This study will help the Researcher to able to articulate pertinent problems that are hindering the foreign investments in Uganda's Oil and Gas sector despite numerous efforts put up by the government to improve the efficiency of its petroleum fiscal regime development of a perfect and plausible petroleum fiscal regime in Uganda's Oil and Gas industry.

With the study, the Researcher will be able to add value to what has been put across in the research and to identify other key issues crucial to note and help the already existing policy aspects in place meant to develop a reasonable competitive fiscal petroleum regime. The fiscal laws and policies are examined in the research question. On a more personal level, the study enables the researcher fulfil one of the basic requirements for the award of the degree of master of laws (LLM) in Oil and Gas of Uganda Christian University, Mukono (UCU).

ii. **To the policy makers.**

The study will help to recommend and illustrate practical solutions to the policy makers. Through the extensive research carried out, policy makers will be able to learn more of how a fiscal regime can attract investors in the Oil and Gas sector. Secondly to create amicable policy and fiscal instruments that will attract investments in the Oil and Gas sector in order to enhance and strengthen the fiscal petroleum regime in Uganda's Oil and Gas industry in question as well as other extractive industry. It further facilitates the public to understand the technical aspects of Uganda's fiscal system, thereby placing them in a position to seek better accountability from the Government

iii. This study is of important because it will help the researcher to fulfil the first requirement for award of a master's degree in Oil and Gas at Uganda Christian university

Iv The researcher also intends to publish his piece of work for academic purposes.

### 1.10 JUSTIFICATION OF THE STUDY.

The Oil and Gas industry can earn a country very massive revenue, which can facilitate development in other sectors and consequently boost sustainable development across 5 all sectors. However, this can only pass if the country adopts a taxation system that manifests

government objectives but is also mindful of the necessity of sustaining attractiveness of the petroleum sector to foreign direct investments (FDis). The current petroleum fiscal regime lacks robustness and is scattered in many legislations and agreements, which breeds uncertainty.

Despite the fact that Uganda is not very attractive to foreign investors in its oil and gas industry, Uganda has continued to offer more incentives as a way of encouraging more investments in its oil and gas sector.

This is due to the fact that maximising revenue is the main objective of the host government and attracting investors in the oil and gas sector is the main priority of any host government, in absence of an effective petroleum fiscal regime , achieving the most critical objective of encouraging more investments into the sector can be a dream and yet if its well-managed, the fiscal petroleum regime has the capacity of turning Uganda into one of the most industrialised countries in Africa especially in the oil and gas sector. According to UBOS Report of 2018 statistics and the Uganda Investment Authority Report of 2018 indicate that despite measures and efforts taken by the government to encourage more foreign investments in the country especially in the oil and gas sector, the country has remained less attractive to foreign investments a problem that is affecting the oil and gas sector.

The most significant element of the study is the fact that it will produce empirical evidence regarding the analysis of Uganda's petroleum fiscal regime in fascinating investors in Uganda's oil and gas industry in terms of encouraging investments in the oil and gas sector and why those incentives have not fostered inflow of foreign investments in Uganda's oil and gas sector.

The findings of the study will be shared with other institutions especially those that are involved in encouraging more investments in the oil and gas sector for example in Uganda Investment Authority in general a body responsible for encouraging investments in Uganda. This intended to lobby for policy implementation relating to oil and gas sector and how those incentives can be used to encourage foreign direct investments in Uganda's oil and gas industry.

This study explained the existing fiscal system in one paper and how it balances government and investor interests, recommending positive changes where need be. It is also important for the GoU to refer to studies like the one undertaken in order to establish the international efficiency of the existing petroleum fiscal regime and gauge whether it can meet its objectives of fascinating investors in the oil and gas sector.

A lot has been written on the rapid widespread diffusion of fiscal regime in Uganda that affects investors in the oil and gas industry as one of the most notable trends over the past years. The demand for efficient use of these fiscal instruments and allowances is gradually increasing at the present time[36]. The fiscal policies and instruments are surrounded by various problems regarding the way they are embraced which the previous studies had left out. Therefore, this study will be justified in the sense that it highlights the imperative of Uganda's fiscal regime and its inherent dynamism towards fascinating investors in Uganda's oil and gas sector.

## 1.12 THEORITICAL FRAMEWORK.

Theoretically petroleum fiscal regime plays a crucial role in attracting foreign investments in extractive industry. A proper and well thought out fiscal regime must be able to attract investors in its critical sectors. In Uganda the petroleum fiscal regime is expected to help in attracting investors in Uganda's oil and gas industry due to its influence on investor's decision on the sector in which they base their decision on how attractive a country's fiscal regime is.

This is aimed at increasing government tax revenue in form of taxes from the Oil sector, improving infrastructure state in the country and sustainably extracting the country's natural resources, and creating, improving employment and improving living standards of Ugandans. However, in reality Uganda's petroleum regime has not been able to attract more investors to its mining and oil sector due to many factors.

## 1.13 CONCEPTUAL FRAMEWORK.

A conceptual framework helps to postulate or hypothesize and test certain relationships with the view of improving the understanding of the situation.[37]

In the conceptual framework below, the researcher analyses the efficiency of Uganda's petroleum fiscal regime in attracting investors in the Oil and Gas sector. As indicated, Uganda faced challenges of foreign direct investments due to economic instabilities, corruption, Poor Infrastructure, Inadequate implementation Mechanism, Fiscal Policy Regime and Instruments.

The above-mentioned factors affect the capacity of the fiscal taxation regime to promote foreign investments in the Oil and Gas sector. Failure of which means less investments in the Oil and Gas sector and less attractive to the investors despite various efforts put in place to

[36] *Ibid.*
[37] *Sekaran , u.&R Business Research Methods 2003.*

attract investors the Oil and Gas sector.

However, it's important to acknowledge that there is a relationship between efficiency of Uganda's petroleum fiscal regime and its ability to investors in Uganda's oil and gas industry and it's also moderated and influenced by other factors like , economic rent, Neutrality of the tax , risk sharing, government take ,certainty and transparency.

The nature of petroleum taxation and the constituent fiscal instruments making up the respective taxation regime are determined by the policies, legal framework in place at any given time and the provisions of the different petroleum agreements that the country signs with the international oil companies and the contractors.

The conceptual framework in fig 1.1 below identifies the variables in the study. 'Petroleum fiscal Regime or Oil and Gas fiscal regimes is the independent variable (IV) whereas 'factors that attract investments' (factors that promote investments in the fiscal instruments) constitute the dependent variable (DV). The intervening variables are the characteristics of a good taxation system, which translate into features adopted to measure the efficiency of the current fiscal regime, which include certainty and transparency, Risk sharing, Economic Rent, Government Take and Neutrality.

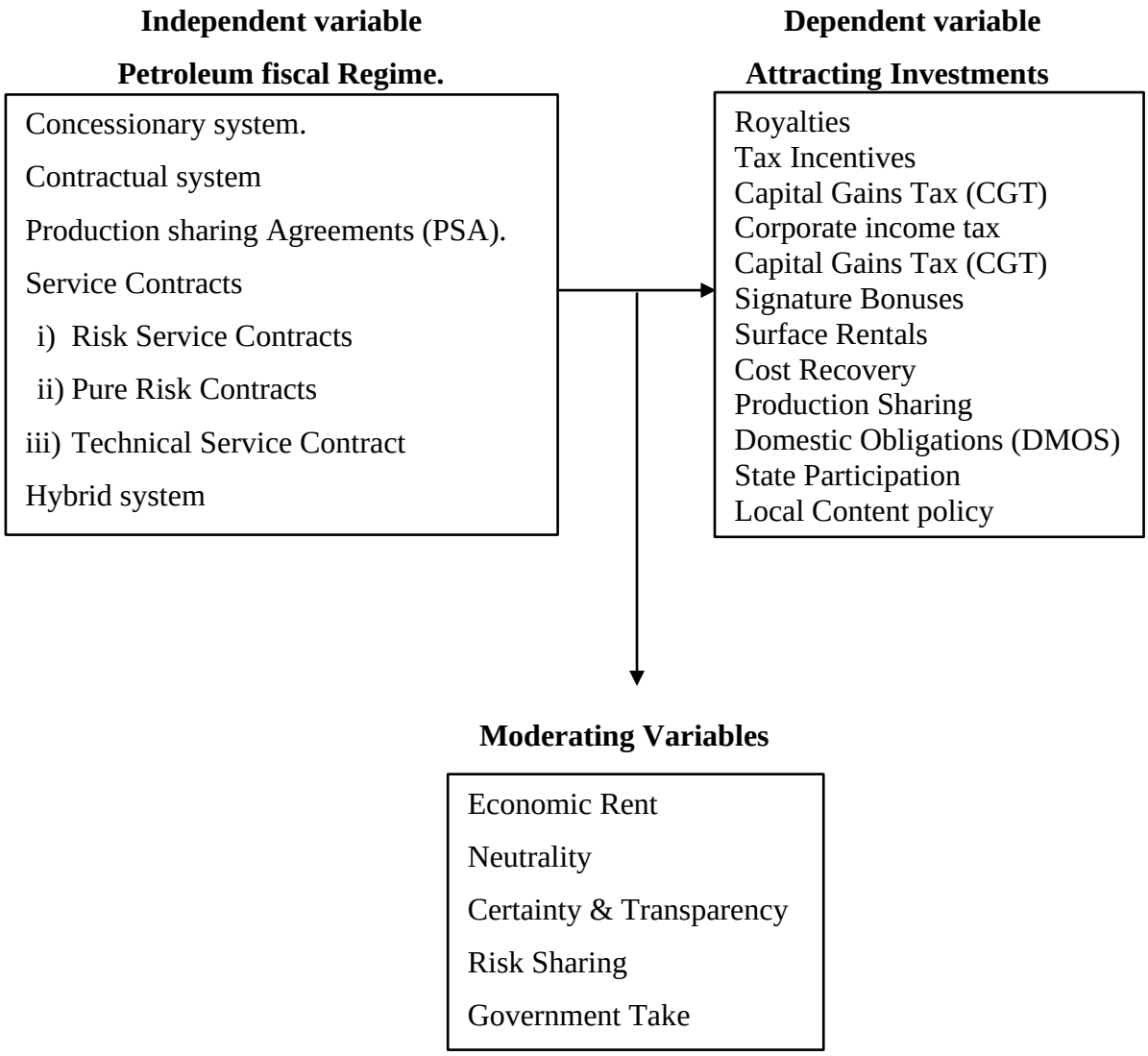
The nature of Petroleum fiscal regime and the constituent fiscal instruments that attract investments making up the respective petroleum taxation regime is determined by the policies, legal framework in place at any given time and the provisions of the different petroleum agreements that the country signs with International oil Companies and contractors.

Petroleum fiscal Regime is broken down into three systems to wit: the concessionary system, Contractual Systems (production sharing agreements) and the Hybrid systems. The Contractual systems are classified further into production sharing agreements and service contracts. Ultimately, service contracts downsize into risk service contracts, pure service contracts and technical service contracts.

Fiscal instruments put in place by the prevailing legal and policy framework determine the configuration of the petroleum taxation system. Whether the respective system is effective, largely depends on how the fiscal instruments reconcile the concept of economic rent with the attributes of a good tax system, namely, neutrality, certainty and transparency; risk sharing and government take amongst others.

*Figure 1: Conceptual framework*

**Conceptual Framework showing the Efficiency of Uganda's Petroleum Fiscal Regime in attracting investors in Uganda's Oil and Gas sector.**[38]




**Measuring the efficacy of the Petroleum Fiscal Regime in attracting investors in Oil and Gas sector.**

The framework suggests that fiscal regimes have an effect on attracting investors in the Oil and Gas sector. It shows how effective fiscal regime as the independent variable and attracting investors as the independent variable. The fiscal regime is characterized by tax instruments and allowances and how sustainable these instruments are to both the host state Uganda and the

[38] *Ibid.*

international oil companies.[39] These instruments affect the rate of returns on foreign investments basing on how much they attract otherwise.

## 1 Structure of the Dissertation.

This study was divided into has six (6) parts, as follows:

i) Chapter one introduces the study. It presents an overview of the background, Problem Statement, Research Objectives and Questions, Significance of the study, Scope of the study, Justification of the study as well as the Conceptual Framework; a summary of the chapter, Research methodology and Limitations of the study.

ii) Chapter 2: Literature Review; This section reviews existing literature on, what makes a petroleum fiscal regime in one country more attractive to investors than the other. It expands on the characteristics of an effective petroleum fiscal regime as put across by different scholars, academicians and researchers. This part also presents an analytical overview of petroleum taxation regime with regard to investments.

iii) Chapter 3: : Methodology; this part looks bringing out the research design, study population, research instruments, data sources, ways of analysing data and research ethical considerations.

iv) Chapter 4: Data analysis and presentation; this analyses the questionnaire and interview response rates. It also presents an analysis of the main findings of the study including the interpretation and discussion thereof.

v) Chapter 5: legal and Regulatory framework in ugandas oil and gas sector. This section also delivers the status of petroleum taxation, petroleum fiscal instruments and how they can be used to attract investors in Uganda's oil and gas sector.

vi) Chapter 6: Conclusions and Recommendations; this section presents the summary of findings, limitations of the study, recommendations as well as outlines areas for future research.

[39] *Adopted and modified from Bsinomugisha ,Kivengyere and Tusairwa, 2006.*

# CHAPTER TWO

## LITERATURE REVIEW

### 2.1ntroduction.

According to Hart[40], literature review is "the selection of available documents on the topic which contain information, ideas, data and evidence written from a particular standpoint to fulfil certain aims or express certain views on the topic and the effective evaluation of these documents in relation to the research being proposed" by Hart.[41]

This chapter therefore presents the theoretical framework of the research and review of relevant previous research. It begins with the broad literature on petroleum fiscal systems in general providing an insight and analysis to identify any gaps, trends, ideas and theories as highlighted by Saunders[42] and he progressively narrows down to cost recovery and the different types of recoverable costs which will help in testing efficiency in PSCs[43]. It proceeds with definitions, country experiences and different forms of inefficiencies in PSCs. Finally, the chapter ends with a review of relevant institutional framework best practices for efficient monitoring of PSCs.

### 2.2 Petroleum Fiscal Regime.

A petroleum fiscal regime of a country is a set of laws, regulations and agreements which governs the transfer of economic benefits derived from petroleum exploration and [44]production according to Gudmestad[45]and this is the same definition adopted by Philips and Charles. According to Wilson Bahati and Barbra Beyeza[46], the regime regulates transactions between

[40] HART, C., Doing a Literature Review: Releasing the Social Science Research Imagination. London: Sage Publications 1998

[41] HART, C, Doing a Literature Review: Releasing the Social Science Research Imagination. London: Sage Publications 1998.

[42] SAUNDERS et al., "Research Methods for Business Students" Pearson Education, e-resource Robert Gordon University, Research Methods Module Notes at http://campusmoodle.rgu.ac.uk/course/view.php?id=77818 (Accessed in March, April and May 2019)

[43] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[44] GUDMESTAD, "Development of Petroleum Resources with Emphasis on Offshore Fields". WIT Press.2018. And *Philip D, Michael K and Charles Mc Pherson. The Taxation of Petroleum and Minerals. Rutledge Taylor and Francis e-Library 2010 page 93.*

[45] GUDMESTAD, "Development of Petroleum Resources with Emphasis on Offshore Fields". WIT Press.2018.

[46] Wilson Behati and Barbra Beyeza, Getting A good deal? Analyzing Uganda's Oil Fiscal Regime. CRPD

the HG and the IOC especially in developing countries and the same is echoed by Claude Duval[47]. Before the different types of fiscal systems are discussed, it is important to clarify first, who holds the rights to petroleum underground? According to Gudmestad[48], at least two systems are possible: • whoever owns the ground above, also owns the resources below

The state owns the resources below, regardless of ownership to the ground above (inclusive of the resources below offshore waters)

While the former is found in the United States of America, the latter system is common in many other resource rich countries (in Europe, Latin America, Africa, Middle East and Asia). This study will concentrate on the latter system in which the state has the authority to grant rights to any party to carry out petroleum extraction.

The state grants such rights through a process of either negotiation or bidding. The national legislation, usually the Constitution and/or the Petroleum law/Act[49], is the starting point for any licensing regime as it determines the entitlement of the resources underground. Other laws, regulations and agreements are then derived there from Tordo[50]. Solid literature, both theoretical and empirical, has been undertaken on the forms, effectiveness and attractiveness of various oil regimes worldwide. Extensive studies and research by Kemp[51], Johnston[52], Bindemann[53], Johnston[54], Pongsiri[55], Tordo[56], and Nichols[57] etc provide the oil industry with vast knowledge of the functioning of petroleum fiscal systems. According to Johnston, there are two broad families of petroleum fiscal systems; the Concessionary systems

Working Paper No. 64 December, 2018.

[47] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986.

[48] [48]GUDMESTAD, "Development of Petroleum Resources with Emphasis on Offshore Fields". WIT Press.2018.

[49] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition page 250 . 2009 Barrows Company Inc. 1986

[50] TORDO, S, "Fiscal Systems for Hydro Carbons: Design Issues" Washington, D.C, World Bank Paper.2007.

[51] KEMP, A.G, an Economic Analysis of Petroleum Exploitation Terms in Ireland, the UK, Norway, Denmark and the Netherlands (with A.W. Gray), Price Waterhouse. 1998.

[52] JOHNSTON, D. & JOHNSTON, D, Petroleum Exploration and Production Rights: Allocation Strategies and Design Issues. World Bank Working Paper no.179.2017.

[53] BINDEMANN, K, "Petroleum Sharing Agreements: An Economic Analysis", Oxford England, Oxford Institute of Energy Studies. 1999.

[54] BINDEMANN, K, "Petroleum Sharing Agreements: An Economic Analysis", Oxford England, Oxford Institute of Energy Studies. 1999.

[55] PONGSIRI, N, "Partnerships in Oil and Gas Production-Sharing Contracts", International Journal of Public Sector Management, 2004, Vol. 17, No.5, pp.431-442

[56] TORDO, S., (2007), "Fiscal Systems for Hydro Carbons: Design Issues" Washington, D.C, World Bank Paper.

[57] PONGSIRI, N, "Partnerships in Oil and Gas Production-Sharing Contracts", International Journal of Public Sector Management, 2004, Vol. 17, No.5, pp.431-442

and the Contractual Systems.

The similarity is that in both systems, the investor assumes all risks and costs associated with exploration, development and production, and "receives compensation adequate to the risk" [58] The fundamental difference relates to the ownership of the petroleum resources according to Tordo [59] and the control of exploration and production activities according to Johnston. According to Bindemann[60].
Bindemann[61] further states that each form can be used to accomplish the same purpose.

According to Otto, taxation methods that have been used in selected mineral producing nations that main development and exploration stage is key and they are three criteria for measuring the effectiveness of the fiscal regime. They include method and level of taxes, levies, ability to pre determine tax liability, and stability of the fiscal regime. However many issues linger when qualitatively analysing a fiscal regime.[62]

### 2.2.1 Concessionary (Royalty/Tax) System

According to the international monetary fund Report[63], in concessionary systems, the host state transfers the ownership of the oil and gas minerals to the IOC, in exchange for royalties and tax.[64] Concessionary systems, also known as the Equity/Royalty/Tax system were the first type of Oil and Gas agreement according to Pongsiri[65] and very dominant in the 1940's and 1950's. They are still used by most developed countries like USA, Norway and UK. The state grants exclusive rights (license) to the company (licensee) to extract petroleum[66]. The licensee will own the installations put in place as well as the petroleum extracted according to

[58] TORDO, S, "Fiscal Systems for Hydro Carbons: Design Issues" Washington, D.C, World Bank Paper.2007.
[59] TORDO, S, "Fiscal Systems for Hydro Carbons: Design Issues" Washington, D.C, World Bank Paper. 2007.
[60] BINDEMANN, K, "Petroleum Sharing Agreements: An Economic Analysis", Oxford England, Oxford Institute of Energy Studies. 1999.
[61] BINDEMANN, K, "Petroleum Sharing Agreements: An Economic Analysis", Oxford England, Oxford Institute of Energy Studies. 1999.
[62] Philip Daniel, Michael Keen and Charles McPherson, The Taxation of Petroleum and Minerals, problems and Practice. 2010.
[63] International monetary fund, The Taxation of petroleum and minerals, principles, problems and practice.2010.
[64] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[65] PONGSIRI, N, "Partnerships in Oil and Gas Production-Sharing Contracts", International Journal of Public Sector Management, 2004, Vol. 17, No.5, pp.431-442
[66] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

Gudmestad.[67]

Under this system, royalty is first taken account of, from gross oil production and paid to the state; the concessionaire is then allowed to deduct operating costs, depreciation, intangible drilling costs and other related charges before calculations of taxes[68]. The royalty represents a cost of doing business and is thus tax deductible.[69] Taxable income under concessions may be taxed at the country's basic corporate tax rate. Any tax losses are normally carried forward until full recovery[70].

Traditional (classical) concessions, especially in the Middle East were characterised by development rights awarded to IOC's for large areas (at times entire countries)[71]. IOC's had complete control and schedule of mineral development, and contracts were signed for long periods (50-75yrs). However, currently, modern concessions have been restructured to include royalty and bonus payments, work obligation, shorter contract periods, relinquishment clauses and state/NOC participation[72].

**2.2.2 Contractual System U**nder the contractual system the host governments retains ownership of the reserves and only grants the IOC (contractor), the right to explore for, develop, and produce the reserves. Contractual systems are either service contracts (pure service and risk service) or PSCs. PSCs are the most common forms of agreement according to and are used mainly in developing countries like Indonesia, Egypt, Angola, India and Uganda.

**2.2.2.1 Production Sharing Contracts .**According to Johnston**[73]**, the concept of production sharing is ancient and widespread whereby farmers in the USA and Venezuela had been

[67] GUDMESTAD, "Development of Petroleum Resources with Emphasis on Offshore Fields". WIT Press.2018.
[68] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio 72. [68] Philip Charles McPherson, International Petroleum and Exploitation Agreements, Legal Economic and policy Aspects 2nd edition. 2009 Barrows Company Inc. 1986

[69] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[70] TORDO, S, "Fiscal Systems for Hydro Carbons: Design Issues" Washington, D.C, World Bank Paper. 2007.
[71] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[72] BINDEMANN, K, "Petroleum Sharing Agreements: An Economic Analysis", Oxford England, Oxford Institute of Energy Studies. 1999.
[73] BINDEMANN, K, "Petroleum Sharing Agreements: An Economic Analysis", Oxford England, Oxford Institute of Energy Studies. 1999.

practicing it for decades. It's an agriculture concept where the landlord allows the tenant to use his land in exchange for a specified share of production[74]. The first modern oil PSC was signed in 1966 in Indonesia according to Johnston. Currently almost half of oil producing countries are using PSCs[75].

A main argument in favour of the PSC for HG's is that, unlike the traditional concessions, they have turned the balance of ownership of reservoirs from the IOC to HGs allowing them more control and benefits from production without transferring of investment risks according to Marcia[76].

This is especially true for developing countries that lack the technical expertise and financial resources to undertake such activities[77]. The oil is owned by the state which hires the IOC/contractor to explore and, in case of commercial discovery, develop the resources. The IOC operates at its own risk, providing personnel, finance and technical resources for exploration, development and production and receives a specified renegotiated share of production as a reward[78]. However, in the event that no commercial discovery is made, then the IOC/Contractor bears all the risks and has no claims on the HG according to Johnston[79].

**2.2.2.2 Service Agreements.**

Another variation of contractual systems is service contracts, where the contractor is compensated by payment in cash for their service. All production belongs to the state. Like the royalty and PSC, the contractor is usually responsible for the provision of capital for exploration and development[80]. In return the contractor recovers costs through a fee which is

[74] BINDEMANN, K, "Petroleum Sharing Agreements: An Economic Analysis", Oxford England, Oxford Institute of Energy Studies. 1999.

[75] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[76] MARCIA, A, "Cost Recovery In Production Sharing Contracts: Opportunity For Striking It Rich Or Just Another Risk Not Worth Bearing?" Centre for Energy, Petroleum, Mineral Law and Policy (CEPMLP), University of Dundee. 2010.

[77] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[78] BINDEMANN, K, "Petroleum Sharing Agreements: An Economic Analysis", Oxford England, Oxford Institute of Energy Studies. 1999.

[79] TORDO, S., JOHNSTON, D. & JOHNSTON, D, Petroleum Exploration and Production Rights: Allocation Strategies and Design Issues. World Bank Working Paper no.179.2017.

[80] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

often taxable according to Johnston[81]. The difference with the other contracts is that the contractor is not entitled to oil. Service agreements can be pure service or risk service. A pure service contract is where the contractor carries out work on behalf of a HG and a fixed fee is agreed to compensate the contractor with or without discovery of oil according to Mazeel[82].

These contracts are usually common in the Middle East where there is little or no risk of discovery of oil and the countries have substantial capital but only need expertise. Contracts usually undertaken by service companies may include drilling and development (completion and testing) services. Under a risk service contract the contractor accepts to share exploration risks by linking his pay to the success of the project according to Gudmestad[83].\

If exploration is successful, the contractor is allowed to recover the costs through sale of oil/gas and also receives a fee based on the A pure service contract is where the contractor carries out work on behalf of a HG and a fixed fee is agreed to compensate the contractor with or without discovery of oil according to Mazeel[84]. These contracts are usually common in the Middle East where there is little or no risk of discovery of oil and the countries have substantial capital but only need expertise. Contracts usually undertaken by service companies may include drilling and development (completion and testing) services.

Under a risk service contract the contractor accepts to share exploration risks by linking his pay to the success of the project[85]. If exploration is successful, the contractor is allowed to recover the costs through sale of oil/gas and also receives a fee based on the
Percentage of remaining revenues[86]. A form of risk service contract was developed by the Iranian government, known as "Iranian Buyback Agreement", where the IOC invests until when production begins and the field is handed over to the government or it's NOC. Although the contract terms allow compensation based on oil/gas revenues (like in PSCs), contractors do not acquire any rights to oil/gas unless if its fees are paid in kind. PSCs or Service contracts can also be Technical assistance contracts, where a company is contracted to carry out a task at an existing field, such as rehabilitation, redevelopment or enhanced oil recovery for a fee.[87]

[81] TORDO, S., JOHNSTON, D. & JOHNSTON, D, Petroleum Exploration and Production Rights: Allocation Strategies and Design Issues. World Bank Working Paper no.179. 2017.
[82] MAZEEL, M, Petroleum Fiscal Systems and Contracts, Hamburg, Diplomica Verlag GmbH .2010
[83] GUDMESTAD, "Development of Petroleum Resources with Emphasis on Offshore Fields". WIT Press.2018.
[84] MAZEEL, M, Petroleum Fiscal Systems and Contracts, Hamburg, Diplomica Verlag GmbH .2010
[85] GUDMESTAD, "Development of Petroleum Resources with Emphasis on Offshore Fields". WIT Press.2018.
[86] MAZEEL, M, Petroleum Fiscal Systems and Contracts, Hamburg, Diplomica Verlag GmbH .2010
[87] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International

In such fields, a production profile with a specified decline rate is agreed. If future production is as per the agreed decline rate, then all production will go directly to the government. However, if production increases above the agreed rate, then that is deemed to be due to the contractor's technical assistance and hence subject to production sharing between the government and contractor according to Mazeel[88].

**2.2.2.3 Partnerships and Joint Ventures Joint ventures (JVs)** are business enterprises jointly undertaken by two or more companies, who share the initial investment, risks and profits. They come together to form a new entity by contributing equity, for a specific period of time, share revenues, expenses and assets. Although Roberts[89], distinguishes between partnerships and JVss, for the purpose of this study, both terms will be used interchangeably. In both Concessions and PSC's it is common for two or more companies to participate as partners in a license or contract.

The advantages of JVs in the petroleum industry are (Roberts 2010): • Risk sharing- exploration and production projects have become more complex and risky with high geological (deep offshore drilling), financial (expensive), political (nationalisation) and commercial (price volatility) risks such that these can now be spread across more widely to a group of companies;

• Skills sharing- allows parties to pool skills, expertise and abilities to avoid duplication and also learn from each other; and

• Participation in multiple projects- allows one party to undertake only a part of a project and frees up the unutilised resources to be devoted to other profitable projects

Governments can also initiate JVs in order to get alternative view points on the effective development of the resource and also as safe guard of excessive cost according to Gudmestad[90].

In countries like Norway, government may award a license to several companies jointly, even if they applied separately. JVs are also created through a Farm-in, whereby, a company which initially owned a license or contract, and/or makes a large discovery, may agree that another party enters the project as a new partner. A case in point is Uganda where in

Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[88] MAZEEL, M, Petroleum Fiscal Systems and Contracts, Hamburg, Diplomica Verlag GmbH .2010

[89]ROBERTS, P, Joint Operating Agreements. Globe Law and Business, 2010.

[90] GUDMESTAD, "Development of Petroleum Resources with Emphasis on Offshore Fields". WIT Press.2018.

2012 Tullow Plc, after successful discovery, entered into partnership with Total and CNOOC (Tullow 2012). JVs can be incorporated or unincorporated. Unincorporated JVs are more common and refer to relationships which are documented by contract or agreement known as a Joint Operating Agreement (JOA) which specifies how responsibilities and benefits will be shared amongst themselves.

The parties do not incorporate a separate company. They are usually referred to as contract joint ventures according to Al-Emadi [91] and Roberts [92]. Under JVs, one of the participating companies will be designated as an Operator by the host government (although partners may be allowed to nominate) while the rest are known as Non-operating partners. The operator will conduct all operations using its personnel and contracted services and the non-operators will either reimburse (through billings) or prepay (cash calls) their shares of expenditure to the operator depending on the agreed procedures[93]. Each partner will lift its own share of oil/gas produced and is responsible for its sale. It has been argued that JVs are important tools in promoting efficiency through economies of scale, cost sharing, and reduced duplication and increased monitoring of operators by, not only, governments but also non-operating partners Roberts[94]

**Ugandan perspective**

Uganda discovered commercially viable quantities of oil and gas in its western rift valley in the Albertine region of western Uganda in 2006[95], this news spread like bush fire since the country was thought to have hit a jackpot since the resource had capacity to economically transform the entire country in terms of social, economic and on the political sphere., little did most of the Ugandans knew that discovering oil is different from gaining from it due the associated misuse of oil wealth that could potentially land Ugandan into a resource curse since in Africa, it's the way of life in ,most oil reach nations like Nigeria etc.

In order for Uganda to effectively benefit from its new black gold, it needed an effective

[91] AL-EMADI, T, "Joint venture Contracts (JVCs) Among Current Negotiated Petroleum Contracts: A Literature Review of JVCs Development, Concept and Elements", Georgetown Journal of International Law.2010.
[92] ROBERTS, P, Joint Operating Agreements. Globe Law and Business, 2010.
[93] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio [93]International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[94] ROBERTS, P, Joint Operating Agreements. Globe Law and Business, 2010.
[95] Ministry of energy and mineral development policy report of 2006.

fiscal regime that would help in regulating the oil sector and also ensure that the government get as much revenue from oil and gas activities as possible[96]. The government enacted many laws aimed at ensuring tax compliance and benefit accrual before even oil exploration takes effect, this was aimed at ensuring that international oil companies don't take advantage of weaker fiscal regime to benefit more from the resource than the host nation itself.

Uganda repealed its 1999 production sharing Agreement (PSA) model, 2012 PSA model which was modified to cater for eventualities that were not foreseen by the 2012 mode by 2016 model. Among others, the 2016 PSA model provided for royalty, bonuses and many other tax instruments. Uganda has a wide range of taxes that includes indirect taxes for example VAT tax provided under the VAT Act, Income Tax provided under the income Tax Act, stamp duty tax under the stamp duty Act, local government taxes provided under the local Government Act and the Kampala Capital City Authority Act among others, all of which are aimed achieving effective taxes for oil and gas sector in Uganda with a view of maximizing and balancing the interests of the oil and companies and the host government

This section reviews literature on the characteristics of an ideal taxation system; these are later on in this study adopted to measure the competitiveness of the current petroleum fiscal system[97].

According to Kimuli Anthony, [98] The attractiveness of a petroleum fiscal regime is determined by the way it balances non-complimentary interests between the government and the oil companies without distorting resource allocation[99]. That is, by accommodating attributes of a good tax system in fiscal regime

This section reviews literature on the characteristics of an ideal taxation system; these are later on in this study adopted to measure the competitiveness of the current petroleum fiscal system. The competitiveness of a petroleum fiscal regime is determined by the way it balances non-complimentary interests between the government and the oil companies without distorting

[96] Kimuli Anthony, is Uganda's petroleum fiscal system efficient? Faculty of Management Aberdeen Business School.2013,
[97] Kimuli Anthony, is Uganda's petroleum fiscal system efficient? Faculty of Management Aberdeen Business School.2013,
[98] Kimuli Anthony, is Uganda's petroleum fiscal system efficient? Faculty of Management Aberdeen Business School.2013,
[99]James L. Smith, issues in extractive Research Taxation, A Review of Research Methods and model (2012) IMF Working paper, WP, 12, 289.IMF 4.

resource allocation. That is, by accommodating attributes of a good tax system in fiscal regime design.

HGs adore tax systems that collect significant resource revenues, but often, these distract investors. As such, it is crucial that a HG designs a fiscal regime that adequately distributes rewards between its objectives and investors' interests[100]. Although this is a widely agreed objective, scholars, researchers and policy-makers continue to argue that there is no ideal tax system. HGs design petroleum fiscal regimes according to particular circumstances facing their territories. That is why several scholars have proposed different but closely related attributes of the optimal or ideal tax system. Literature on the attributes of the optimal tax system follows below in part 2.3, after the part defining key variables immediately herein under.

According to Beata Slusarczyk in her article stipulates that the ability of the economy to attract FDI is an important measure of its investment attractiveness and it demonstrates its internationalisation. It is an important determinant of the economic growth of the host country.[101]

Poland is one of the countries that has made it probable and great returns from the form of FDI thus boosting its economy.[102] In 2015, it is stipulated that the value of FDI reached 712.1 billion PLN about 39.6% of its GDP. Poland among its tool to attract these huge amounts of FDI is the use of tax incentives, one of its common one being the use of tax exemptions in special economic zones (SEZ) where it enacted a basic legal act of 20 October 1994 on SEZ regulating the issues related to the establishment of the SEZ. In Poland there are 14 SEZ of which according to the regulations, they will operate by the end of 2026.

This is a key example for Uganda to learn from in order to encourage lucrative FDI in the oil and gas industry.

According to the oil revenue management policy, the current fiscal regime for the petroleum sector is based on a production sharing contract or agreement. Under this arrangement, the oil companies are contracted by government and are rewarded an agreed share in the production[103]. The fiscal regime thus comprises of royalties, cost recovery oil, profit oil and income tax[104].

[100] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[101] Beata Slusarczyk, 'Tax incentives as a main factor to attract foreign direct investments in Poland'< https://www.researchgate.net/publication/325362243 > accessed 27September 29, 2019

[102] Ibid

[103]

[104] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International

The aspects of investment into Uganda are handled through the Uganda Investment authority. The Government's policy is generally to encourage foreign investment and there has been a recent trend toward relaxing controls like on the purchase of real estate by investors. The report also stipulate that incentives are granted for certain levels of investment.

The problem in question is thus that there is a big gap of uncertainty about how the aspect of tax incentives is handled in the oil and gas industry of Uganda irrespective of the clear fiscal regime for the oil and gas industry. This uncertainty is not good if Uganda as a country is to encourage pertinent FDI in the oil and gas industry in question[105].

The study in question seeks to venture into the understanding of how best Uganda as a country can use tax incentives to encourage FCI as a form of FDI through examining fiscal and regulatory framework in place meant to deal with tax incentives in the oil and gas industry in question

According to Claude Duval and [106] FDI helps to increase economic growth based on the significance of capital investment for achieving growth. FDI is the main source of technology transfer from developed countries to developing countries, which provides assistance to promote the domestic industry. Developing countries suffer from poor infrastructure, political and economic instability due to insufficient resources. It is generally claimed that FDI could be helpful for the transfer of knowledge, marketing expertise, managerial skills, and different opportunities to access the market. On the other side, according to the dependency school theory advocated for.

According to Joe Amoako Tuffour and Joyce Owusu Ayim, Ghana streamlined her fiscal regime by making amendments to the laws governing the industry following the discovery of hydrocarbons. Before the amendments, they were loopholes in its fiscal regime and the country was worried about the prospects of international oil companies using loopholes in the fiscal regime scoffon everything from the hydrocarbons thereby leaving the country in the resource curse[107]

Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[105] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[106] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[107] Francis Kweku Samanhyia , fiscal Regime of Ghana's oil and gas industry , a pre commercial production Review. European journal of Business, Economics and Accountancy vol.iv, No.9, 2016 page 65.

## 2.2 Definition of Key terms

### 2.2.1 Petroleum Fiscal Regime

A Petroleum Fiscal Regime[108] according to Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio is a mechanism through which the host government manages, regulates and shares revenues accruing from the exploitation of its oil and gas resources it provides the guidelines for cost recovery and equitable profit sharing[109]. It consists of both tax and non-tax instruments

### 2.2.2 Ideal Tax theory

In 1776, Adam Smith propounded four maxims of equity, certainty, convenience and economy as the foundation of an ideal taxation system since then, they have been absorbed into taxation systems across oil-producing countries, a factor that has greatly enhanced competitiveness of the respective petroleum fiscal regimes. However, due to variance in geological, market, commercial and sovereignty characteristics amongst oil producing nations, the inclusion of the said maxims has failed to produce the desired competitive results.

According to past studies, better and easily understandable maxims have been accepted while the ones perceived as antagonistic and complicated have largely been circumvented[110]. To confirm this; since Adam Smith, several researchers have recognized new attributes of an ideal tax system. In the process, they have either included, varied or excluded some of Adam Smith's original maxims[111]. Nonetheless, it has widely been contended that for a nation to develop a competitive tax system, it is cardinal to obscene Adam Smith's original principles[112]. Studies recognizing other attributes of a good tax system include the following.

In 1966, the Carter report - Canada, underlined equality, certainty, convenience of payments

[108] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 198

[109] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[110] Robert W. McGee, "Some Principles of Taxation for Latin America: Lessons from the USA and European Experiences. (14th Conference-Business Association of Latin American Studies Rio de Janeiro, Brazil, April 1997) <econwpa.repec.org/eps/pe/papers/9805/9805003.ps.pdf>

[111] Muzinah Mansor and Mahamad Tayib, "Malaysian Indirect Tax Administration System: An Analysis of Efficiency and Taxpayers perceptions, '(2005), 12(2) IJMS, 19-40, 25-26 (2005)

[112] Alley and Bentley, (n.25)

and economy in collection as the canons of taxation[113]. In 1975, the Asprey report - Australia, proposed fairness, efficiency, simplicity, growth and stabilizations as the criterion for determining a good tax system[114].

Added to the above, in 1978, the Meade report-United Kingdom, noted that the characteristics of a good tax structure are; incentives and economic efficiency, distribution effects, international aspects, simplicity, costs of administration and compliance, flexibility and stability, and transitional problems[115]. The 1982 O'Brien report - Ireland, enunciated equity, efficiency, simplicity, low administrative and compliance costs as criteria for a tax system

In addition in 1991, according to the Ridge and Smith suggested that a good tax system should have the following attributes; administrative feasibility, economic efficiency, equity and accountability[116]. Later in 1994, Jackson put forward equity or fairness, certainty, convenience of payments, economy in collection and compliance and transparent as the characteristics of an efficient taxation system[117]. The OECD -Ottawa, in 1998 when laying down conditions for a taxation framework for electronic commerce found that a good taxation system should exhibit; neutrality, efficiency, certainty and simplicity, flexibility, effectiveness and fairness[118].

Furthermore, in 1999 the tax faculty of the institute of Chartered Accountants of England and Wales (ICAEW) underpinned principles of a better tax system as; statutory based, certainty, simplicity, easy to collect and calculate, property targeted, constant, consultation, regular review, fair and reasonable and competitive[119]. Making its mark, in 2001 the American Institute of Certified Public Accountants (AICPA) laid down guiding principles of a good tax system as Equity and fairness, certainty, convenience of payments, economy in collection,

[113] Royal Commission on Taxation, The use of the tax system to achieve economic and social objectives (The Center Commission, Vol.2 Ch.1,1966)
[114] Asprey Ropert, Roport on Taxation Review Committee (1975) 13 http://purl.library.usyd.edu.au/setis/id/p00087
[115] Meade Report, A report of a committee chaired by Professor Meade Je on The structure and Reform of direct Taxation (London England: George Allen & Unwin, 1978)
[116] Ridge M and Smith S, 'Local Taxation: the options and the Argument, '(1991) IFS, Report Series No.38.
[117] Peter M Jackson, Efficient Local Government Finance: The Never Ending Story in Terry F. Pecheacek (ed).Towards Restructuring: The Dimensions of Change in Local Government. (London, Public Finance Foundation Reader, CIPFA, 1994)
[118] Committee on Fiscal Affairs, 'electronic commerce Taxation Framework Conditions, ' (Ottawa Taxation Framework Conditions 1998)< http://www.oecd.org/dataoecd/46/3/1923256.pdf> accessed on September 28, 2019
[119] ICAEW Report 1999, Towards a Better Tax System, Tax Faculty: Tax guide 2/00 http://www.icaew.com/~/media/corporate/archive/files/technical/tax/tax%20policy/towards%20a%20better%20tax%20system.ashxaccessed September 20, 2019

simplicity, neutrality, economic growth and efficiency, transparency and visibility, minimum tax gap and appropriate government revenues[120]

Likewise, in 2003, according to James and Nobles pegged the principles of taxation to efficiency, incentives, equity and macro-economic considerations[121].

In 2008, Nakhle underlined[122] 6 principles that underscore a good tax system, notably; efficiency, neutrality, equity, risk sharing, stability, clarity and simplicity. In 2011, the Mireles review stated that a good tax system is one that meets overall spending needs of a government, is neutral and achieves progressivity as efficiently as possible[123].

On top of the above, in 2013, the Fiscal Commission Working Group-Scotland observed that a well-designed tax system should be simple, neutral, stable and flexible[124]. Most recently in 2014, Nor Aziah Abd Manaf and others[125] asserted that an effective and good taxation system should possesses features like neutrality, stability, equity, flexibility, risk sharing, profit sharing, certainty, predictability, efficiency, clarity, simplicity, progressivity, adaptability, revenue raising potentials and transparency[126.]

Notwithstanding, there is a section of authors who assert that although an optimal tax system is made up of a combination of attributes, some are more important than others. For example,

According to Kemp and Rose[127] efficiency and risk sharing are the main attributes for a good tax system. While Heady[128] notes that equity is the more important element. In contrast,

[120] AICPA, Guiding Principles of Good Tax Policy: A framework for Evaluating Tax Proposals (Tax Policy, Concept Statement http://www.aicpa.org/interestareas/tax/resources/taxlegislationpolicy/advocacy/downloadabledocuments/tax_policy_concept_statement_no.1.doc. accessed on September 28 2019

[121] James Simon and Nobles Christopher, The Economics of Taxation: Principles, policy and Practice (7th Edn, Revised, Hemel Hempstead, Prentice Hall 2003)

[122] Nakhle, Petroleum Taxation: Sharing the oil wealth…..,(n.12) 11-17.

[123] James Mirrlees and Others, The Mirrless Review Conclusion and Recommendation For Reform, "(2011) Vol.32 (3). Fiscal Studies – the journal of A pplies Public Economics, 331-359, 3332-334. http://www.ucl.ac.uk/-uctp39a/Mirless Review_FS_2011.pdf> accessed September 29 2019

[124] Fiscal Commission working Group, principles for Modern and Efficient Tax System in an Independent Scotland (Edinburg, Scottish Government, 2013) http://www.gov.scot/resource/00434977.pdf accessed September 29 2019

[125] Nor Azizah Abd Manaf and others, Effect of Taxation and fiscal Arrangement on Marginal Oil Field Investment Climate: A Theoretical Framework, (2014) 10(15), Asian Soci

[126] James Mireles and Others, (n 40) 92.

[127] Alexander G. Kamp and David Rose, The Effects of Taxation On Petroleum Exploitation a Comparatives Study, (University Of Aberdeen, 1982)

[128] Christopher Heady, Optimal Taxation as a Guide to Tax Policy: a Survey ', (1993) 14 (1) Fiscal Studies, 15-

Dickson [129] ignores the concept of risk sharing as proposed by Kemp and points out efficiency/neutrality and equity as the most important elements of a good tax system. More to that, while Raja[130] focuses on neutrality as the most important attribute; Watkins[131] sanctions most of the maxims set forth by Adam Smith but emphasizes risk sharing as the leading attribute for a good tax system.

Nonetheless, whatever their propositions, they all rotate around the four maxims originally set down by Adam Smith. The slight difference in their assertions may be explained by variance in natural needs and circumstances akin to the challenges they face on the daily in the respective surrounding environments. However, none of the literature reviewed by the researcher touches and/or measures the competitiveness of petroleum taxation in Uganda's upstream oil and gas industry, thus this study.

To evaluate the extent of the attractiveness of Uganda's petroleum fiscal regime, this study employs a four-criterion analytical framework, which forms the foundation of an ideal effective and competitive tax system[132] according to Wilson and Babra. The said factors have been selected from the attributes of a good tax system as reviewed in the literature above. No other study merges these attributes in a single paper to measure the competitiveness of a petroleum fiscal regime as the researcher herein does. In addition, there is no known scholarly work on the subject touching Uganda's petroleum industry. This is the first of its kind in Uganda. Prior to combining the selected factors for analysis, a discussion of each criteria follows below.

### 2.2.3 Uganda's Oil and Gas Fiscal Regime

Article 13 0f the PSA model of 2016[133] for Uganda is to the effect that all taxes, duties or other lawful imposition applicable to the licensee are supposed to be applied according to the laws of Uganda, and any dispute that arise there in are supposed to be handled according

41, 16-17

[129] Tony Dickson, Taxing Our Resources For the Future, (1999) http://www.eraweb.net accessed July 23 2019

[130] Atif Raja, 'Should Neutrality be the Major Objective in the Decision –Making Process of the Government and the Firm,' Online Available : http://www.dundee.ac.uk/cemlp/reflist.docmain/htm/carartcle2.hmt accessed July 4 2019

[131] Watkins G Campbell 'Atlantic Petroleum Royalties: fair deal or raw deal, (2001) The AIMS Oil and Gas papers, Atlantic Institute for Marketing Studies, Halifax, Nova Scotia.

[132] Wilson Bahati and Babra Beyeza, Getting a Good DEAL, an analysis of Uganda's oil fiscal Regime CRRRPD Working paper no 64, Dec, 2018.

[133] Uganda Production sharing agreement model of 2o16.

to the objections and mechanism established under the laws of Uganda. This statement has a huge impact in ensuring that the country's fiscal petroleum regime is not subject to abuse from international oil companies see Tallow oil company v Uganda revenue authority. Even under Article 12[134] it states that the production sharing agreement is calculated using R factor as a way of maximizing more profits by the host state.

Uganda's fiscal regime is governed by the production sharing agreement of 1999, 2012, and the new one of 2016 currently in force, the petroleum (exploration, Development and production) Act of 2013 with its upstream and midstream Regulations and Acts there under, Incomes Tax Act as amended by 2019, VAT Act as amended, the petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations 2016, National oil content Regulations of 2016, National Energy policy etc.

Taxes are divided into groups namely the Direct and the Indirect taxes. These same taxes many of them also applies in the oil and gas industry for Uganda's sake.

**Direct taxes[135] are** those taxes levied on individuals or entities as income tax, corporate tax, poll tax or wealth or capital tax and they are discriminative in nature while as Indirect taxes are levied on businesses, activities and the products that are sold and bought in the distribution chain basically on the goods and services offered to consume and they are non-discriminative in nature. These particular taxes can come in different forms and categories which may include those taxes in personam, in Rem and quasi taxes all of which are very critical in an extractive industry of oil and gas.

In order for us to be able to ascertain the effectiveness of Uganda's fiscal regime, one has to first critically analysis the following tax instruments in regard to the oil and gas industry[136] as provided for under Ugandan fiscal regime as discussed below.

### 2.2.4 Royalty

It's provided for under Article of 2016 PSA Ugandan model and section 154 of the petroleum Act, where the government is supposed to take royalty as a form of tax on gross total dairy production in barrels of oil per day and for each contract area and such gross total dairy

[134] Ugandan production sharing agreement model of 2016.
[135] Nerima, Tax practice guide in Uganda 2017.
[136] Charles p. McPherson, petroleum Administration in Developing Countries, 2019.

production defined as the total output of crude oil less all the water and sediments produced and all the amounts of petroleum re injected into the petroleum reservoirs.

Where production exceeds 25000 or higher than 25000 but doesn't exceed 50000 or higher than… or where it exceeds 100000m or higher than that 100000, however royalty on national; gas is up for negotiations as per Article 9, under the 1999 model it's not provided for, however under the 2012 PSA model its provided under Article 22 of the model with only a few modifications by the 2016 model

It's a tax levied or a payment made by the land user to the landowner for the compensation for use of that piece of land where that mineral or oil is situated and it's taxed at a marginal rate. This kind of tax is regressive in nature[137]. It may take different forms for example production tax, product tax, severance tax, hoteling ground rent etc.

Royalty[138] is charged based on actual production output on the specific quantity of the oil extracted based either in tones or USD$ Barrels[139].

Ad valorem[140] is charged based on the value of the mineral or oil to that effect. The petroleum Act allows for the royalty tax on the crude and its subsequent allocation. Under specific royalty, royalty is charged on volume, or quantity output produced and it's applied accordingly.

When it comes to Ad valorem royalty, it's based on the value of petroleum exploited in order to define the level of payment on the basis of evaluation, point of evaluation and the valuation reference point. The main rationale for royalties is to allow the state early revenues as soon as the project kick starts and Ad valorem itself is very flexible and sensitive to changes in price and inflation.

### 2.2.5 Bonus payments

Under the 2012 model, its provided for under Article 9 and under the 2016 PSA model

[137] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[138] Carole Nakhle petroleum taxation, oil and gas practice and emerging trends.
[139] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[140]Greg Gordon, John Peterson oil and gas law.

its provide for under Article 8, its to the effect that upon signing this agreement, the licensee is required to pay a sum of money as a signature bonus and production bonuses when all the cumulative production within the contract has been exceeded …… this is incorporated as a way of ensuring that the government reaps well from the oil production.

These bonuses includes signature bonus which the government gets after the licensee signs the contract which is at 300, 0000 USD$, Discovery bonuses, which is given to the government after getting commercially viable quantities of proven hydrocarbon reserves and is at the cost of 200,000USD$ and the production bonus paid to the host nation when production exceeds an agreed limit in the contact.

This one time on Set off payment and it's not cost recoverable and it's a quickest way under which the government can obtain early revenues from oil and gas.

### 2.2.6 Corporate tax

This tax also applies to oil and gas sector in Uganda like any other imposed by the Ugandan parliament exercising sovereign legislative supremacy over its territory[141]. A licensee and a contractor are also subject to the income tax Act at rate of 30% to the gross income less the deductions. It's the sum of its costs and profit share or proceeds from petroleum operations and it's derived by a licensee from those operations in the contractor area. , all these taxes are aimed at helping Uganda to balance its interest under its production model of 2016.

### 2.2.7 Income tax

Income tax is provided for under the Incomes Tax Act as amended by 2019, it's provided for under section 27[142] of the income Tax Act, it provides for the depreciation of assets involved in the petroleum exploration expenditure and it only allows for the depreciation of only assets under section 27 of the incomes tax Act.

The asset is treated as having different depreciation pool and the depreciation rate applicable is 100%. These also includes depreciation of intangible assets expense where by such deductions are made and the principle of amortization of assets is applied at the same rate

[141] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[142] Section 27 of Income tax Act.

as the assets of the petroleum exploration. Under the PSA of 2016[143], a depreciated asset to be used under petroleum development phase operation must have been acquired before the commencement of the commercial production, then depreciation allowances shall apply however if the expenditure is incurred before the commencement of commercial production , the deductions shall apply as if incurred at the commencement of the commercial production and the deductions are supposed to be computed according to the prescribed formula under section 8(1) GC (5) of the income tax Act , all of which are aimed at ensuring maximization of revenues from the oil and gas sector.

Under the same incomes Tax Act[144], a licensee under the petroleum operations must furnish a return for each year of income not later than one month after the end of year and its must be filed after 7 days in respect of the provision payments required under collection and recovery provisions of the law under section 89. Such returns must be done in not later 30 days at the beginning of each income year in each calendar quarter of the year. More so the tax commissioner may require a licensee under the petroleum agreement acting as an operator to furnish a return in respect to that area on behalf of all licensees with an interest in the petroleum agreement.

In addition to returns of income, a contractor must file an annual consolidated petroleum revenue return with the tax commissioner at the end of each year of the income not later than 90 days after the expiry of the income, this provision also applies to self-assessment on the side of the licensee if the assessment is made by the commissioner on a licensee in relation to the petroleum revenues and not chargeable income. All these is aimed at ensuring that the host government reaps more economic benefits from the petroleum activities.

In addition to filing returns of income, a contractor must file an annual consolidated petroleum revenue returns with the tax commissioner at the end of each year of income in not later than 90 days after the expiry of the year of income. In case of petroleum revenues other than income tax, the amount of payable for the quarter under the petroleum agreement unless the otherwise agreed between the government and the licensee, all the payments or refunds of petroleum revenues and all these taxes are supposed to be paid to the government of Uganda to Uganda Revenue Authority.

Failure to furnish returns calls for a penalty from the tax master and this also includes

[143] Uganda production sharing agreement model of 2016.
[144] Global tax oil and gas guide 2017.

late payment of refund of the petroleum revenues and the other taxes payable to the government, this late payment also attracts interest one each day of default. Income tax under section 142[145] puts in a penalty of 50000 and 500000, all this is aimed at punishing tax defaulters in the petroleum operations. It even penalizes making misleading and false statements in returns which amounts to an offence aimed helping the government to realize more revenue from the sector.

The licensee[146] is also obligated to pay a decommissioning fee which can also include an environmental tax aimed at catering for the exploration site after the mining and drilling of oil has been accomplished, this done through a decommissioning plan put up by the licensee for the petroleum operations during that fiscal year which is deducted from that year and that plan must be approved in the petroleum contract.

Decommissioning expenditure in a year of income is deducted in that year of income provided that the work is not paid for directly or indirectly from money made available out of the licensee decommissioning fund from the petroleum contract. The amount accumulated from the decommissioning fund or withdrawn from the fund to meet the expenditure incurred will be exempted from income tax unless the amount in the expenditure is included in the gross income of the licensee[147]. This cap is aimed at ensuring that the licensee doesn't abuse the decommissioning fund in order to benefit from such deductions and hence will help the government to maximize more income from the petroleum operations.

### 2.2.8 Withholding Tax

This is also a type of fiscal instruments that Uganda applies in ensuring that the government enjoys more revenue from the petroleum industry. The rate applicable to a particular dividend paid by a resident licensee or resident contract to anon resident company is 15%. The rate of non-resident contractor who derives a fee for the provision of services to a licensee is 10%, a licensee is also required to withhold tax at 6% for the payments aggregating to one million or more made to a resident sub-contractor.

[145] Petroleum (exploration, development and production) Act
[146] Petroleum (exploration, Development and production) Act.2013.
[147] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

In this way, an entity is required to withhold 15% from the payment if it makes to another entity if the payment is regarding the dividend interest, royalty, rent, national resource payment or management charges from sources in Uganda. If a resident company debenture is to be exempt from withholding tax under the income tax Act is only if the debenture had been issued outside Uganda for the purpose of receiving fund for use by a company in a business carried out in Uganda. All these safe guards are aimed at preventing international oil companies from withholding more income than that which is legally permitted under the international standards[148].

**VAT** is also another instrument employed by Ugandan fiscal regim**e** in dealing with the oil and gas sector. Vat regime applies to all transactions in Uganda at a rate of 0% or 18%[149], it applies as an indirect tax. In this way its levied-on goods and services imported into Uganda and vat paid on imports is reclaimable for example a Ugandan entity should register for vat and charge 18% as a fee for contract work but its recovered as vat input and vat output against. When an oil company reaches a threshold of 150 million an equivalent to 75.000 for each quarter to voluntarily register for VAT if the threshold has been reached.

The tax payable on supply made by contractor to a licensee to under the petroleum operations is deemed to have been paid by the licensee to all the contractor provided the supply is for use by the licensee solely and exclusively for petroleum operations while the contractor is compiling the tax payable by the licensee for the tax period, the total credit allowed to all the taxable person in the tax period does not include the amount of the licensee is derived to have paid to the contractor.

According to the VAT[150] law, the supply of refined petroleum fuels including motor spirit, kerosene and gas, jet fuel is subject to excise duty and supply of liquefied petroleum is also exempted from VAT but the supply of crude oil is subject to vat at a standard rate.

**Capital Gain Tax[151]** is also applicable to Uganda fiscal petroleum regime, its charged on disposable property of any oil company, under the petroleum agreement capital gain tax is

[148] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[149] Section 39 of the VAT Act.
[150] VAT Act.
[151] New vision, Thursday 27, 2019 17.53

at 30% and its derived from computing the proceeds to the costs bases profits to repatriation issues is at withholding tax of 15% .

## 2.3 Analysis the of Uganda's Petroleum Fiscal Regimes in attracting investors in Uganda's Oil and Gas sector.

The relationship between IOCs and HGs is one of scramble 'for money', profit and revenue respectively[152]. All the same, to be competitive certain attributes must be available. The standard for measuring and analysing the efficacy of a fiscal regime may be either qualitative or quantitative. The focus of this study is qualitative. Of the various known variables, this study focuses on the following four assessment criteria as sieved from reviewed literature, namely, neutrality, risk sharing, certainty & transparency, and government take.

This study selected the above four criteria because they describe some of the main characteristics that regulate fiscal relationships between HGs and IOCs in oil rich nations, particularly in Sub-Saharan Africa which is dominated by under development and a high political risk profile. Later on, in this work, the study deploys the four criteria to establish how the current petroleum fiscal regime balances government objectives against investor interests. In the process, the study measures the competitiveness of Uganda's petroleum fiscal system.

Sections 2.4.2 - 2.4.5 below, canvass the selected criteria, but before that, section 2.4.1 Describes the concept of economic rent and its interaction with the principles of neutrality, certainty and transparency, risk sharing and government take.

### 2.3.1 Economic Rent

In assessing the attributes of a good tax system, the role of economic rent cannot be understated. A good tax system is 'hand in glove' with economic rent[153]. Economic rent is the difference between the market value of a natural resource and all factors of producing it[154]. Taxing economic rent feeds off surplus revenue after accounting for the costs of all capital and labour inputs and as such is competitive. Economic rent neither distorts resource allocation nor

[152] Nakhle, Petroleum Taxation: Sharing the Oil wealth…., (n12) 11
[153] Nakhle, Petroleum Taxation: Sharing the Oil wealth…., (n12) 11
[154] Daniel Johnston, International Petroleum Fiscal System and Production sharing Contracts, (Tulsa, Oklahoma..United States, PennWell Publishing, 1994) 6. See also 'John Cordes an Introduction to Taxation of mineral rents, In James Otto (ed). The Taxation of Minerals Enterprises (26)

discourages investments or production decisions and its impact on investment is neutral[155]. It forms the basis of all attributes of a competitive tax system

However, using economic rent as the basis for levying petroleum taxes is not void of inadequacies. Ascertaining economic rent requires cognition of the differing costs of individual factors of production and their respective opportunity costs yet measuring these parameters to determine economic rent is intricate, controversial and elaborate. In addition, since a pure rent-based tax does not discourage or encourage investments, a tax based on economic rent will most likely not spur investments or technological invention but simply maintain the status quo[156].

### 2.3.2 Neutrality

Neutrality relates to the allocation of a tax obligation without influencing pre-tax commercial decisions[157]. A neutral fiscal regime levies taxes on economic rent and as such fronts the imposition of taxes on profit as opposed to revenue. It generates revenues when a company earns profits and nothing when it makes losses[158].

Some of the instruments used to induct neutrality into a fiscal regime are; income tax[159], resource rent tax[160] and the use of sliding scales[161]. However, due to geological factors, costs of the company, changes in technology and volatility of market conditions, it is difficult to determine economic rent[162], therefore designing a fiscal regime that is entirely neutral is impossible thus the necessity of measuring up to other principles like risk sharing, certainty

[155] Jack Mintez, and Duanjie Chen, 'Capturing Economic Rents From Resources Through Royalties and Taxes, ' (2012) 5(30), SPP Research Paper No. 12-30, School of Public Policy, University of Calgary 3.
[156] Jack Mintez, and Duanjie Chen, 'Capturing Economic Rents From Resources Through Royalties and Taxes, ' (2012) 5(30), SPP Research Paper No. 12-30, School of Public Policy, University of Calgary 3.
[157] Phillip Daniel, Petroleum Revenue Management Overview. (The World Bank ESMAP Program, 2004) < sitereresources.worldbank.org/INTOGMC/Resources/phillipdanieloverviewpaper.pdf> accessed on September 3 2019.
[158] Ross Garnet and Anthony Clunies Ross, Taxation of Mineral Rents, (Oxford, Clarendon, 1983) 87
[159] This is Tax on IOC's revenue and is applicable after costs and allowances have been deducted. It includes a particular rate and base that must be carefully defined in order to effectively tap the correct base.
[160] Resource Rent Tax (RRT) targets profit rather than revenue, and involves carrying forward of expenditure until it is fully recovered and the IOC receives an expected minimum return on investment. It considers the time value of money. RRT comprised of R-factor and rate of return systems. It is a neutral tax see Tordo, (n.8) chapters 5 & 7
[161] Sliding Scales – is a mechanism used to control volatility. It involves an upward or down ward movement of taxes along with income or production. Under a PSC, the host government's shares of profit oil will be adjusted to accommodate any changes in gross production once it reaches a certain threshold. This seeks to balance the effect of market booms and bursts 'see' Phillip C.F Crowson, mining Unearthed (London Aspermont Uk, 2008) 19
[162] Phillip Andrews-speed, Fiscal System for Mining: The Case of Brazil, (1998) , 13(2), JMPBE 10.

and transparency, and government take.

### 2.3.3 Risk Sharing

Risk denotes unconfirmed anticipations in the investor's expected retunes[163]. The upstream petroleum industry encounters many risks, prominent amongst them, hitting a dry well[164], price volatility and information asymmetry[165]. Prior to making investment decisions, investors consider the risk sharing profile and only invest if the mitigating factors make resource extraction cheaper than in peer jurisdictions[166]. To lower the risk profile, HGs accommodate some of the risks by providing incentives[167] through allowable tax deductions and provisions like indefinite loss carried forward[168] and state participation[169]

In addition, government shares and or reduces the risk in the upstream segment by investing in the improvement of geological knowledge and data[170]. It further shares the risk through providing favourable thin capitalization ratios to facilitate debt financing for upstream projects.

Despite the above, the HG has to protect its tax base. This means that it has to impose restrictions on the use of such instruments like debt financing otherwise IOCs can use it to erode all their earnings by purportedly paying out colossal sums in terms of interests on loan facilities secured from abroad or from their foreign branches. Since interest payments normally constitute deductible expenses, the country may have nothing to tax[171]. Therefore, to enhance attractiveness the burdens faced in the industry ought to be shared adequately[172].

[163] Thomas R. Stauffer and John C. Gault, 'Exploration Risks and Minerals Taxation: How Fiscal Regimes Affect Exploration Incentives' (1985) 6, The Energy Journal, Special Tax Issue 125-135.
[164] Atif Raja 'Should Neutrality be the Major Objective in the Decision –Making Process of the Government and the Firm,' (1999) 3 CAR (CEPMLP Annual Review). http://www.dundee.ac.uk/cepmlp/gateway/news=27945n accessed on September 27 2019
[165] Andrews –Speed (n.59)14
[166] Alexander G. Kamp and D. Rose, The Effects of Taxation on Petroleum Exploitation: a Comparative Sturdy (University of Aberdeen, 1982)
[167] Mintz, and Chen (N.52) 4
[168] Carol Nakhle, 'Petroleum Fiscal Regimes in Phillip Daniel, Michael Keen and Charles McPherson (eds), The Taxation of Petroleum and Ministers: Principles, problems and practice (London & New York, Routledge, 2010) 89-122.
[169] Michael Likosky, 'Contracting and Regulatory issues in the Oil and Gas and Metallic minerals industries,' (2009) 18(1) Transnational Corporations, 165.
[170] Roger Tissot, ' Challenges of Designing an Optimal Petroleum Fiscal Model' (October, 2010) Inter- American Bank /Idb, Energy-working paper, http://www.10.iadb.org/intal/intalcdi/pe/2010485.pdf accessed September 2019
[171] Roger Tissot, ' Challenges of Designing an Optimal Petroleum Fiscal Model' (October, 2010) Inter- American Bank /Idb, Energy-working paper, http://www.10.iadb.org/intal/intalcdi/pe/2010485.pdf accessed September 2019
[172] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International

Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

### 2.3.4 Certainty and Transparency

Certainty demands that tax laws should be clear, certain and simple to understand and not arbitrary[173]. The amount to be paid, the time, the manner and nature of tax to be paid should be known beforehand[174]. While this helps the investor plan his investments, it also facilities ease of revenue collection for the government[175]. Everybody should be aware of what the tax is, when and how it is collected.

Transparency and certainty are hand in glove, it dictates that a competitive tax is one, which is known and understandable as opposed to a stealth one. This study adds that a tax hidden under non-disclosure provisions, like the ones in Uganda's PSAs with IOCs is not competitive since it introduces an element of secrecy to the petroleum fiscal regime[176].

### 2.3.5 Government Take

The art of taxation consists of plucking the goose so as to obtain the largest number of feathers with the least possible amount of hissing.[177]'

Government take is the total consideration that oil companies have to forego to gain access to a host country's natural resources expressed as a percentage of the total project cash flow[178]. It includes both tax and non-tax instruments[179]. Investors are concerned with two major aspects of government take, that is; the timing of the government take and profit sharing**.** Investors prefer back-ended taxes to front-ended taxes because the latter reduce a project's NPV and therefore tilts project risks towards the investor[180] • Apportioning profit sharing in a way that compensates investors who carry the largest percentage of risk makes a fiscal regime very competitive[181]. To compensate for the risks apparent in their territories, high-risk nations target

[173] Heady, (n45) 16. See also 'Alley and Bentley (n.25) 608.
[174] The OECD, Studies in Taxation of Foreign Source Income: Controlled Foreign Company Legislation (1996)
[175] Otto and Cordes, The Regulation of Mineral Enterprises: (n54) 28.
[176] Taimour and Minio-Paluello, (n5)
[177] In the words of John Colbert, Jean-Baptist, as Quoted in William J. Beumol, and Alan Staurt Blinder, Economics: Principles and Policy (12th , Southwestern, Cengage Learning, 2011) 361.
[178] Petr Van Meurs, Maximizing the Value of Government Revenues From Upstream Petroleum Arrangements under High Oil Prices, '(2008) at www.krg.org/uploads/documents/Maxismising_the-Value_of_Government_Revenues_2008_06_30_h14m8s56.doc accessed on September 24 2019) 4 see also World Bank paper, Government Take and Competition for Exploration Investments, May 1999.
[179] Tordo (n.8) 11-12.
[180] Frian Aarsnes, 'The Taxation of Multinationals in Africa: Fiscal Competition and Profit Repatriation (including transfer pricing)' (n22)
[181] Saidu, Sani, and Addel Rasheed Mohammed. The Nigerian Petroleum Industry Bill: An Evaluation of the Effect of the Proposed Fiscal Terms on Investment in the Upstream Sector,' (2014) 2(2), Journal of Business and

a smaller government take[182].

Another aspect of government take is how the fiscal regime adjusts to market price volatility: competitively, whether in times of boom or low productivity, the petroleum fiscal regime should be designed to automatically respond and observe the changes, that is, increasing and reducing the government take respectively. Otherwise, a static fiscal regime will cost the Government money in untapped 'windfalls' and distract investments in times of low prices[183]. The government can use its share to ensure that the interests of both parties are covered with changing market conditions

**2.4 Petroleum Taxation.**

The legal system(s) adopted to distribute rights and obligations between the HG and investors in a given nation determines its petroleum fiscal regime[184]. A petroleum fiscal regime[185] refers to a mechanism through which the HG manages, regulates and shares revenues accruing from the exploitation of its oil and gas resources[186]. It consists of both tax and non-tax instruments[187.] The main objective of the HG is maximizing oil revenue; even so, it ought to remain attractable to FDIs[188].

In all oil producing nations, the taxation of petroleum demands a special fiscal regime because of its uniqueness. Price volatility, remoteness, information asymmetry and the exhaustible nature of petroleum make the industry peculiar and therefore necessitating special tax treatment[189].

In addition, differences in infrastructure development, political risk profile, market

Management Sciences 45-57, 47. DoI: 10. 12691/jbms 2-2-3

[182] Johnston (n.51) 'See also" Mintz and Chen, and Chen, (N.52) 4.

[183] Padro Van Meurs (n.93)

[184] Emmanuel B. Amponsah, John A. Enahoro and Abdallah Ali-Nakyea,'Issues of Taxation in the Oil and Gas Sector on Selected Countries: Lessons For Ghana, ,(2012)' 5(2), international Business and Management, 167-174, 167. DOI: 10.39687/j.ibm.19238420120502.1085

[185] Also Known as Petroleum taxation systems or oil and gas taxation system.

[186] Babajide N. Aand Others 100.

[187] The Tax based instruments include Royalities, profit taxes, corporate taxes and income tax while the non-tax-based instruments includes surface fees, Domestic Market Obligations, bonuses and Production sharing 'see also tordo.

[188] Bertrand Laporte and Ce'line de quatrebarbes, 'What do we known about the mineral resource rent sharing in Africa? (2015) working paper 126, FERDI, 2 http://www.ferdi.fr/files/publication/fichiers/p126_ferdi_laporte_quatrebarbes_web.pdf accessed on September on 28 2019. See also 'Wilson Bahati Kazi and TapanKumar Sarker, Fiscal Sustainability and the Natural Resources Cures in Resource –Rich African Countries: Acase Study of Uganda,'

[189] Steven Barnet and Roland Osowski, Operation Aspects of Fiscal Policy in Oil-Production Countries' (international Monetary Fund, 2002) 13-15

accessibility, nature and requirements of exploitation contracts entered geological risks and economic variables obtainable in each country, means that "a one size fits all" approach cannot apply in petroleum taxation[190]. Thus, a country may have more than one petroleum fiscal regime[191], for this reason; there are more fiscal systems than there are Nations[192]. A summary of the risks is contained in table 2.1 below.

[190] See Table 2.1-surmmary of probable risks that investors in the oil and gas sector are likely to face.
[191] For Example, Ghana: see Dankwa Kankam and Shmael Ackah, The Optimal Petroleum Fiscal Regime for Ghana: An Analysis of Available Alternatives,' (2014) 4(3), international Journal of Energy Economics and Ploicy, 400-410
[192] Omowumi O. Lledare, Upstream petroleum Economic Analysis: Balancing Geologic Prospectively with Progressive stable Fiscal Terms and Instruments,' (2014) 10(1), Academic, 28. http://www.spe.org/twa/print/archives/2014/2014v101/14_Acadmimia_v10n1.pdf accessed on September 27, 2019

*Table 2.1:* Summary of Risks in the Oil and Gas industry

| **FACTOR** | **OIL INDUSTRY** |
|---|---|
| Geological Risk | Relates to lack of accurate geological data/information asymmetry; quality and quantity of deposits |
| Lead-time | Very long time (projects and returns also take a long time, 20 - 50 years) Long and costly exploration and development |
| Political Risks | Prominent political profile - highly vulnerable to political changes |
| Scale of Investment | Very large (over US $ bn) |
| Location | Often remote |
| Cost of failure | Very Large |
| Reward profile | Very large |
| Ownership of | State |
| Renewability | Non-renewable |
| Commercial risks | Volatility and uncertainty of prices |

Source. Author's own tabulation (2015)

### 2.4.1 Classification of Petroleum Fiscal Systems

Petroleum taxation follows the type of fiscal system adapted in the host country. Classically, Fiscal arrangements are categorized into concessionary and Contractual systems, the latter splitting into Production sharing agreements and Service Contract.

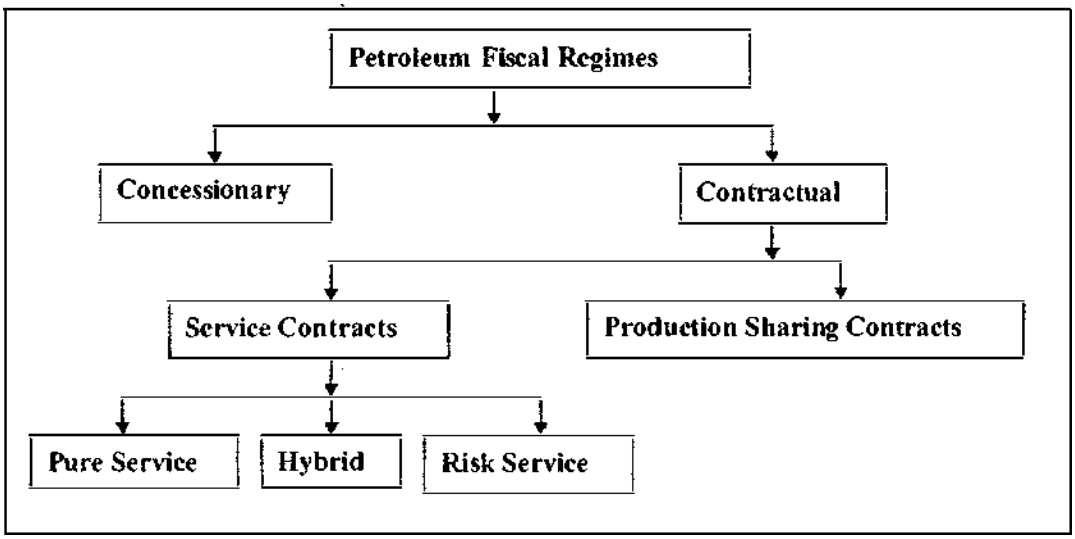
While under a concessionary system, ownership of the resource passes onto private ownership. In a contractual system, the state retains ownership of the resource and the private companies only acquire the right to receive a share of production or revenues from the sale of the resource via a production sharing agreement (PSA) or a matrix of service contracts[193] as payment for the capital invested.

Depending on whether the oil companies acquire interest in the production or on how fees are charged, which may be either flat or tagged to profitability, service contracts are further scaled down into pure, risk and technical service contracts - respectively[194].

[193] Likosky, (n.88)
[194] Smith Ernest E. and Dzienkowski John S, Fifty- Year perspective on the World Petroleum Agreements,' (1989) 24

***Figure 2: below represents a summary of the classification of petroleum fiscal regimes; a brief analysis follows thereafter.***

***Figure 2.1:*** **Classification of Petroleum Fiscal Systems**




***Source:*** Adapted from. David Johnston (1994)[195].

Unlike traditional concessions,[196] the modern concessions consist of short-term periods, namely;

5years for exploration and 30-40years for the exploitation phase[197]. In terms of resource control and project managements, the host government acquires greater control[198]

Furthermore, other than royalties, modern concessions comprise of a variety of taxes, for example; income tax, additional profit tax and bonuses[199.] Although the IOC owns the oil, it may be required to meet domestic market obligations[200]. Any changes in the regulatory regime will directly affect the petroleum fiscal regime under a concessionary system because, as opposed to the contractual system, it is incorporated into the legislation of the HC[201].

[195] Daniel Johnston, (no.70)
[196] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[197] Likosky (no.84)
[198] Ingilab Almadov and Others, How to scruitnise a Production Sharing Agreement, (Dmitry Matchin, Ekaterina Zvyagintsev and Esther Wolff (trs), IED, 2012) 19
[199] Dr Abdullah Al Faruque, Utility of Flexible Mechanisms and Progressive Tax System in Ensuring Stability in Fiscal Regime of Petroleum Contract: An Appraisal "(2004) 2(3), OGEL www.orgel.org/article.asp?key=1269 accessed September 28 2019
[200] Nakhle, (n.12) 32.
[201] Al Faruque, (n 107) 14

From a financial and functional perspective, the concession and contractual systems are not so different and when well-managed, both produce the same results. However, the contractual system is a manifestation that the HG is in still owns the resources and is in control[202]. This is the main reason why the contractual system is widely preferred in the developing world. Petroleum fiscal regimes consist of various fiscal instruments, outstandingly, royalties, income tax, signature and production bonuses, rentals and petroleum taxes amongst others[203]. A detailed discussion follows below.

The aforementioned classifications notwithstanding, modern literature on petroleum taxation reveals a third category pegged to the hybrid legal arrangement for the allocation of rights and obligations between the HG and Investors in respect of the exploitation of the former's O&G resources.

The hybrid system brings together characteristics associated with either the contractual or the concessionary systems into one system. It incorporates both the production sharing and concessionary regime into a single system.

### 2.6 Petroleum Fiscal Instruments

Petroleum fiscal instruments consist of an assortment of instruments, which include the following: bonuses, rentals, royalties, corporate income tax, resource rent taxes and contractual arrangements like production sharing arrangements, service agreements, carried interest provisions, equity participation and special taxes. An examination of some of these follows below.

#### 2.6.1 Royalties

The main target of the HGs in petroleum exploitation is to earn a share of the profits made by lOCs operating within their jurisdictions[204]. Royalties are one such way of partaking of the respective profits. The royalty rate may be determined in one of the following three ways:

[202] Johnston, (n.70)
[203] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[204] Evaristus Oshionebo,'Fiscal regimes for natural resource extraction: implications for Africa's development 'in Francis Botch way (ed), Natural Resource investment and Africa's Development (Cheltenham, Uk, Edward Elgar Publishing, 2011)213. 'see also Boadway & Keen, (n.7) 1

based on - the value of the resource extracted (ad valorem); the profits earned by the IOC; or on the weight of each unit of the extracted resource[205]. Under the ad valorem and profit based methods, the royalty rate is tied to the value of the resource and profitability if the production and therefore flexible: it changes with the value and profitability of the production[206].

This has an effect on the earnings of the state and is very competitive in the eyes of the lOCs. Yet under the unit of production-based approach, the royalty is set at a fixed rate and is more favourable to the state especially in times of low prices[207].

In general, royalties guarantee government revenue upon the commencement of production and are advantageous during times of boom. However, they are vulnerable to price volatility especially when market conditions are poor. More to that, the extent of the government share is highly dependent on disclosure by oil companies, which may not always be accurate.

In addition, royalties are **in rem** taxes or 'production-based taxes' and therefore directly increase the cost of production[208]. However, where royalty is based on some measure of profit and income, then it becomes **in personam** or a profit-based tax and thus progressive/competitive. Otherwise, production - based royalties like those under the Ugandan fiscal regime [209] is regressive and uncompetitive [210]. They ultimately generate economic distortions and lead to change in investment and production decisions[211].

### 2.6.2 Production Sharing Agreement (PSA)

Developed in Indonesia in 1996[212], PSAs are characterized by sharing of the production, and a life span of between 25 - 30 years or longer. It gives the private investor only exclusive rights over a specific acreage who also incurs all exploration costs. Unless he hits a dry well, the

[205] Everest's Oshionebo,'Fiscal regimes for natural resource extraction: implications for Africa's development ' in Francis Botchway (ed), Natural Resource investment and Africa's Development ( Cheltenham, Uk, Edward Elgar Publishing, 2011)213. 'see also Boadway & Keen, (n.7) 1
[206] Pietro Guj, Mineral royalties and other mining specific taxes, (Crawley, Australia, the International Mining for Development Center, 2o12) 4-5
[207] Oshionebo, ( n118)
[208] Otto and others, Mining royalties, (n.15)
[209] Article 9 of the Model PSA, Uganda (2009)
[210] Nakhle, 'Petroleum Fiscal Regimes,'(n. 84)
[211] Guj, (n.120)
[212] Ernest E Smith, From Concession to service Contracts, (1992) 27(4), Tulsa Law Review 493, 513 http://digitalcommmons.law.utulsa.edu/tir/vol27/iss4/3 accessed on September 20 2019.

investor can recoup all costs and profits upon commercialization of production[213].

A PSA is flexible and simple to apply[214] and balances government and investor interests in the simplest way possible[215]. This makes it a desirable choice in developing countries because they lack capacity and experience to implement petroleum taxation. A PSA has four components of royalty, cost recovery, profit oil, and tax: the rates of these elements determine the attractiveness of the fiscal regime[216].

The competitiveness of a PSA is also determined by the production sharing rate, the lower the rate the more attractive it is to FDIs but less competitive to the HG though depending on other factors related to the location, quality and nature of the oil field.

### 2.6.3 Corporate Income Tax (CIT)

CIT is applied to a company's profits[217]. When adopting CIT, the following issues are important, the tax rate, allowable deductions, and carry forward losses[218]. Due to the unique character of the petroleum industry, some nations make a special CIT regime with different rates for oil companies[219]. This arrangement allows HGs to levy higher tax rates and thus increase their own take of the resource revenue, however, since oil companies are likely to pay more, in their eyes, such fiscal approach is objectionable.

Notwithstanding, a special CIT regime enables the government to levy taxes at a project level thus "ring-fencing" rather than at company level[220]. This limits the companies' ability to

[213] Allen & Overy, Guide to Extractive Industriesb Documents –Oil & Gas' ( World Bank Institute Governance For Executive industries Programmed, January 2013) 3http://wbi.worldbank.org/wbi/Data/wbicms/files/drupal-acquia/wbi/world%20extractive%20programme%20-%200ii%20&%20Guide.pdf accessed on September 20 2019. See also, Thomas Baunsgard A primer on Mineral Taxation' (2004) 2(3) OGEL, 12 www.ogel.org accessed September 20 2019

[214] Allen & Overy, Guide to Extractive Industries Documents –Oil & Gas' ( World Bank Institute Governance For Executive industries programme, January 2013) 3http://wbi.worldbank.org/wbi/Data/wbicms/files/drupal-acquia/wbi/world%20extractive%20programme%20-%200ii%20&%20Guide.pdf accessed on September 20 2019. See also, Thomas Baunsgard A primer on Mineral Taxation' (2004) 2(3) OGEL, 12 www.ogel.org accessed September 20 2019

[215] Nwosu E. Ikenna, 'International Petroleum Law Has it Emerged as a Distinct Legal Discpline, ' (1996) 8, Afri j int'l &comp l428. 443

[216] Tordo, (n8)

[217] Nakhle, Petroleum Taxation sharing the oil wealth…..(n.12)23.26

[218] UNECA, Minerals and Africa's Development: The International Study Group Report On Africa's Mineral Regimes (Addis Ababa, UNECA, 2011) at 91.

[219] Mark Klaver & Michael Trebilcock, 'Chinese Investment In Africa' (2011) 4(1), The Law and Development Review 168, 198.

[220] Boaday & Keen, (n.6)41.

shift losses from one oil field to a more profitable field thereby expanding the tax base and consequently revenue increment. Even so, since "ring-fencing" may discourage investments in marginal fields or even expansion into fresh fields in the early stages of production, it should be adopted carefully[221].

HGs can also adopt a flat rate of CIT for all companies within jurisdiction irrespective of what they do. This is easier to administer and is preferable for oil companies because it is most likely to be low since it involves other companies not engaged very profitable venture as petroleum. Unfortunately, if the flat rates are higher in the HG than in peer jurisdictions, oil companies will earn lesser profits and are most likely to shift their investments, though if other factors like size and quality of the deposits, political and commercial risks are fairer, the capital flight is most unlikely.

### 2.6.4 Cost Recovery

It refers to the means by which oil companies recoup the costs they have incurred in the exploration and production of petroleum[222]. Cost recovery may be either limited or unlimited. Where it is limited, in each year, all the costs incurred and which are recoverable are specified as a percentage of the annual production collectively forming the cost recovery limit[223]. The cost recovery limit is always pre-negotiated and in case any costs are unrecovered, they are carried forward to another financial year with or without uplift - sometimes for a period whereas in most cases indefinitely.

Depending on the nature and location of the oil fields, accessibility to international markets, geological and political risks - HGs may provide 100% cost recovery. Cost recovery limit is important to HGs because it ensures that they earn revenues right from the start of production and therefore the lower the cost recovery limit, the more revenue they earn at the earliest time possible[224]. Yet the higher the cost recovery rate the earlier the lOCs will recoup their returns on investment and therefore the more competitive the regime[225]. Investors prefer

[221] Boaday & Keen, (n.6)41.
[222] Daniel Johnston, (n.70)
[223] Lindsay Hogan and Brenton Goldsworthy, 'international mineral taxation: experience and issues in Daniel Phillip and others (eds), The Taxation of Petroleum and Minerals, principles and Practice, (Routledge, 2010).
[224] Pietro Guj, Mineral royalties and other mining specific taxes, (Crawley, Australia, the International Mining for Development Center, 2o12) 4-5
[225] World Bank,' Taxation and State participation in Nigeria's Oil and Gas sector.' (2004) ESMAP Technical paper, no. ESM 057 http://documents.worldbank.org/curated/en/2004/08/5539607/taxation-state-participaption-

early recovery through generous expense provisions, accelerated depreciation, consolidation and uplifts.

### 2.6.5 Other Petroleum Fiscal Instruments

Other than the above, there are several other instruments that are employed to collect tax and benefits for the HGs in the petroleum industry, notably; signature and production bonuses, surface rentals, capital gains tax(CGT), VAT, Stamp tax, domestic market obligation (DMO), ring-fencing, custom duties, state participation and other levies.

## 2.7 Conclusion of the chapter

This chapter defined the key term, petroleum fiscal regime and reviewed the literature that forms the theoretical framework for this study. Added to that, it analysed the four criteria developed from literature that this study adopts in later chapters to evaluate the competitiveness of Uganda's petroleum fiscal regime. Supplemental to that, this chapter explained the concept of petroleum taxation whereby it detailed the different classifications of petroleum fiscal systems and the various fiscal instruments constituting the said systems.

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# CHAPTER THREE

# METHODOLOGY

## 3.1 Introduction

This chapter explains how the research was conducted. It presents the research approach, the methods used to collect data, sampling techniques used, the population size forming the investigative unit, data collection methods and the data analysis tools. Additionally, it demonstrates the reliability and validity of the methodology adopted and the limitations endured in the course of the study. Methodology is the systematic way a researcher conducts a research[226]. It refers to the process by which one sets out to prove a given set of paradigms[227]. It thus follows that the methodology adopted in this research derives from the objectives (1.3) and research questions in chapter 1.3 & 1.4 respectively on the one hand and the literature review in Chapter 2 on the other hand.

## 3.2 Research Design

Traditionally, there are two methods of conducting a research, notably: quantitative[228] and qualitative[229] research methods. However, in recent years a third type, mixed- methods research[230] has been introduced. To analyse the efficacy of Uganda's Petroleum Fiscal Regime in attracting foreign investments in Uganda's Oil and Gas sector, this study relied among others on perceptions of selected respondents through interviews and a standard structured questionnaire. As such, the researcher adopted a mixed-method research approach. This method has an edge over the traditional methods because, first, it brings on board cross-validation[231] or triangulation and secondly, since it uses the strength of one method to enhance

[226] Jan Jonker and Barjan Pennink, The Essence of Research Methodology: A Concise Guide for Masters and PHD Students in Management Science (London, Springer, 2010) 17

[227] Wills Harmon: An Incomplete Guide to the Future. (New York W.W.Norton 1970) 5

[228] Quantitative Research refers to a systematic empirical inquiry and measuring of events. It also involves the performing of statistical analysis of numerical data. It is scientific in nature, and tends to be employed when a theory is already well developed and is just being confirmed. 'See' Marry John Smith, Contemporary Communication research methods. (Belmont.CA, Wadsworth inc,.1988)

[229] Qualitative research refers to a systematic empirical inquiry into meaning and aims at understanding a social or human problem from multiple perspectives. 'See' Gay D Shank, Qualitative Research: a personal Skills approach (upper saddle River, Merrill, Prentice Hall, 2002)5.

[230] Mixed-Methods research may be defined as one where the research mixes or combines quantitative and qualitative research techniques, methods, approaches, concepts or language into a single study. 'See' Burke R Johnson and Anthony J Onwuegbuzie, Mixed methods research: a research paradigm whose time has come, (2004) 33(7) Educational Researcher 17.

[231] Cross-Violation or triangulation refers to the combination of two or more theories or data sources to study the

the other, it enables the researcher to achieve complementary results[232]. Precisely, this study used analytical and descriptive cross-sectional survey approach.

### 3.3 Study population, Size and sampling techniques.

A population refers to a group of people, events or set of things that form the investigative unit of the study[233]. Literature indicates that what the population knows provides a very important source of information for conducting a research[234]. In this respect, given the age of Uganda's Oil and Gas industry and the technicality of the data required for this study, the researcher used the stratified random sampling criteria to select 28 key informants (who preferred confidence) from a population size of 30 people. At least 3 respondents were chosen from each of the following groups: regulators, policy makers and implementers, tax bodies/foreign investors, tax payers, advisory, academia and civil society watch dogs.

The selected groups where stratified according to stakeholder interests. For example the Petroleum Department at the Ministry of Energy and Mineral Development, Central Bank, Ministry of Finance and Economic Planning, the Tax department at URA, Foreign investors - lOCs (Tullow Oil Pic and CNOOC Limited) , Academia, Tax consultants and Civil society organizations, see table 4.1 below.

The sample size is small because the number of people within this jurisdiction with the nature of information required is limited. To ensure that the selected samples have the necessary knowledge to provide information relevant to this study, the researcher engaged senior officers at the Ministry of Energy and Mineral Development during the selection process. The sample size was determined using the Morgan Table for Determining Sample Size from a given Population as shown in Appendix A.

### 3.4 Data Collection Methods

Literature lists many different methods of collecting data. However, the researcher's choice depends on the characteristics of the population sample, the work force available, finances and

same phenomenon in order to full comprehend it. 'See' Norman K.Denzin, The Research Act: A theoretical/introduction to sociological methods (Chicago: Aldine Pub. Co, 1970)

[232] Mathias Muskate, Deborah Black and Birgit Muskat, Mixed Methods: Combining Expert Interviews, Cross Impact Analysis and Scenario Development' (2012) 10(1), Electronic Journal of Business Research Methods 9.

[233] Uma Sekaran, Research methods for business: a skill-building approach (New York, John Wiley & Sons, 2003)

[234] Floyd J. Fowler Jr, Survey Research Methods (3rd edn, London, Sage Publication 2002) 58

facilities[235]. There are other factors and these include; the time and technicality of questions to be investigated. Thus, the researcher selected the questionnaire and interview methods as data collection tools for this study. They translated into, standardized structured questionnaire[236] and telephone interviews.

Structured questions enhance the quality of research because they are consistent and easy to administer. While telephone interviews are cheap, efficient, time saving and require a smaller number of work force/research assistants.

Considering the fact that the population sample is highly technical, well informed about the subject of research and working very busy schedules; combined with the fact that time for the research was limited; the selected methods provided the best option to attain the research targets within limited time and resources. In total, 28 questionnaires were sent out; each of the respective respondents was requested to supplement the questionnaires with a face-to-face or telephone interview. Table 4.2 below represents the methods of data collection employed in this study.

***Table 3.2:*** **Methods of Data**
Collection

| | | |
|---|---|---|
| **Questionnaires** | **28** | ***100%*** |
| **Telephone Interview** | **28** | ***100%"*** |

### 3.4.1 Questionnaire Design

The structure and design of a questionnaire affects the response rate, validity and reliability of the collected data. As such, it should be simple, clear and understandable[237]. Because the questionnaire design adhered to these requirements, none of the respondents complained nor asked for clarifications; per se, it garnered 82.1 % response. To ensure efficiency and accuracy

[235] Floyd J. Fowler Jr, Survey Research Methods ((3rd edn, London, Sage Publication 2002) 58
[236] A Structured questionnaire is one that consist of pre-coded questions following a systematic sequence of questions. 'See' Bidhan Acharya, Questionnaire Design' (Training –Cum-Workshop in Research Methodology.
[237] Mark Saunders, Phillip Lewis and Andrian Thornhill, Research Methods for Business Students (5th edn, Harlow, FT Prentice Hall, (2009). 'See also Abraham N Oppenheim, Questionnaire Design, Interviewing and Atitude

of construct, an effective questionnaire aggregates answers into a battery or composite of scale, notably the Likert and Thurston scales. This also minimizes response burden, costs of collecting date and maximizes validity[238]. Accordingly, save for section A which asked for the respondents' demographic characteristics, the study embraced a five-point Likert scale (1 =Strongly Agree, 2=Agree, 3=Neutral, 4=Disagree, and 5=Strongly Disagree)

### 3.4.2 Methods of Data Analysis and Tools used

Data analysis refers to the process and stage when the researcher reduces raw data to understandable and meaningful levels and accordingly draws conclusions there from[239]. Data collected in this study was coded[240] and analysed using the Statistical Package for Social Sciences (SPSS). Coding ensures consistency and eases the tabulation task. Consequently, a research report was generated and recommendations for ways of improving the competitiveness of Uganda's petroleum taxation regime where proposed. Also new areas for future research where proposed.

### 3.4.3 Statistical Package Adopted

To facilitate entry of the coded data into the computer system, the study adopted the SPSS statistical package. SPSS[241] was chosen because it is very powerful data analysis package for handling complicated statistical procedures. It is also the commonest package in social science research.[242]

## 3.5 Reliability and validity

To limit threats to the credibility and enhance consistence of variables of the study in agreement with set measurements; the researcher adopted the use of standard questionnaires tied to the Likert scale. Respondents were given at least 11 days to fill the questionnaires, the

[238] Krosnick J.A, 'Maximizing Questionnaire quality,' in Robinson J.P, ET at (eds) Measures of Political attitudes. (San Diegon, Academic n Press, 1999) Chapter 2.
[239] Robert Bogdan and Sari Knopp Bikken, Qualitative research for education: an introduction to theory and methods (Boston, Allyn and Bacon inc, 1982) 145. 'See also' Mathews B.Miless and Michael A. Huberman, Qualitative Data Analysis (2nd edn, Thousand Oaks CA: Sage Publications, 994) 11.
[240] It refers to conversion of data collected using questionnaires into easily understandable and analyzable data. A coding sachem may be determined at the beginning of the research study thereby allowing direct data entry into the database as the questionnaires are filed or one record the responses to the questionnaires onto a different coding sheet and later entering it into the database. In this study the responses to the questionnaires were recorded on a separate sheet coding sheet and then entered into the database
[241] Appendix i
[242] Julie F. Pallant, SPSS survival manuel: a step by step guide to data analysis using SPSS(2nd, Crow's Nest, Australlia, Allen and Unwin, 2005)

researcher also offered to collect them therefore ensuring that the respondents were not stressed by the research tools. Secondly, each respondent that filled in the questionnaire was given an opportunity to supplement his/her responses in the questionnaire with a telephone interview immediately after collecting the questionnaires.

To ensure validity[243], the study carefully selected respondents from relevant fields and in addition, assigned them standard questionnaires. Even the telephone interviews followed a structured trend and only one question demanding for the respondent's opinion on the competitiveness of upstream taxation of oil and gas activities in Uganda was put to all interviewed respondents. The interview was limited to only those that had filled and returned their questionnaires to ensure consistency and information flow. To enhance rigour, the researcher consulted two experts one in each of qualitative and quantitative analysis.

[243] Validity is the degree and ability of a research instrument to measure what it is actually intended to measure. (jenson, 2003:2) & (AERA et al, 1999:184)

# CHAPTER FOUR

# PRESENTATION AND ANALYSIS OF DATA

## 4.0 Introduction

This chapter analyses the questionnaire and interview-based survey data collected in three sections. Section 5.1 summarizes the contents of the chapter. It is followed by section 5.2, which analyses the questionnaire and interview response rates. Finally, sections 5.3 and 5.4 analyse the main findings of the survey.

## 4.1 Analysis of the Questionnaire and Interview Response rates

### 4.1.1 Questionnaire Response

It is settled that the general response rate for questionnaires ranges from 10% to 90% but when a questionnaire is designed well, the response rates are even higher[244]. As already observed in chapter 4, in this study, 28 questionnaires were administered to key informants from all the 6 groups of respondents and 23 were returned/collected fully answered. That is 82.1% of all the questionnaires issued: by the standards above, this was a good response rate[245].

Section A[246] of the questionnaire covering the demographic characteristics did not ask for the level of education because during the pilot study. The researcher discovered that although some respondents did not have qualifications adequate to occupy their portfolio, they had occupied those positions for over 10years and had gained knowledge and skill relevant to respond to the questionnaire. Over 80% of the respondents are in a managerial position or above and over 70% are Lawyers, Accountants or Auditors that have been working in their respective position for over 5years therefor have the necessary exposure and experience to adequately respond to the questionnaires administered. As such, the quality of the responses provided is reliable.

### 4.1.2 Telephone Interview response

All the 28 respondents that received questionnaires where requested to indicate whether they

[244] Elizabeth Wanger, getting research published: an A to Z of publication strategy, (oxford, Radcliffe Publishing 2010) 46
[245] See Table 5.1
[246] See Appendix c

were willing to supplement their questionnaire responses with either a face-to-face or telephone interview. Due to time constraints, they opted for a telephone interview. Only 17 of them, representing 73.9% of all respondents that filled in and retuned the questionnaires, allowed a short telephone interview. This translates into 63.6% of the total respondents that received questionnaires including those that never responded. According to literature and evidence in section 5.2.1 above, this is a good response rate. Table 5.1 below summarizes the response rates.

***Table 4.* 1: Questionnaires issued and returned & Interview response rates**.

The high response rates recorded in this study was due to; firstly, the influence of an introductory letter (Appendix B) printed on the letter head of the institute and the respective influence of Uganda Christian University, Mukono. Secondly, the questionnaire was simple, clear and stuck to the point. Thirdly, in the circumstances, there was ample time allowed to the respondents. Fourthly, the questionnaires were given to experts with adequate knowledge on the subject. Finally, having been in legal practice for over 8years, the researcher knew most of the respondents and as such, there was constant telephone communication in respect of the questionnaires and interviews.

### 4.2 Analysis of the main findings of the study

This section uses the analytical framework described in section 2.3.1 - 2.3.4 of chapter 2 and the data collected using the questionnaire and telephone interview survey to analyse the efficacy of Uganda's petroleum fiscal regime in attracting foreign investments specifically the framework's four factor criteria, notably neutrality, risk sharing, Certainty and transparency, and Government take.

#### 4.2.1 The Survey Findings

The study set out to analyse how Uganda deploys its Petroleum Fiscal Regime to bridge the gap between the main goal of the National Oil and Gas Policy and the interests of investors. In the course of resolving this issue, the study contemporaneously identified the features that constitute a Petroleum Fiscal Regime on the one hand while analysing its competitiveness on the other. This way, the study explained the sophisticated matrix through which the GoU manipulates fiscal instruments to satisfy its National development objectives and still champion investor interests, and ultimately remaining attractable to FDIs.

In order to measure the competitiveness of Uganda's petroleum fiscal regime the researcher engaged respondents for their opinion on four attributes of a good tax system, notably; neutrality, certainty & transparency, risk sharing and government take. The respondents were further requested to opine on whether the aforementioned characteristics are reflected in the current fiscal petroleum regime[247].

Additionally, the respondents were also asked to opine on whether the following incentives improve the international competitiveness of the industry, namely; those under the MPSA 2009; like loss carry forward provisions, allocation of a share of part of the oil production to recover costs incurred in the upstream segment and treating funds contributed to the decommissioning fund as deductible expenses. More to that, negotiable signature bonuses and Tax exemptions under the VAT and Excise Duty Acts. The respondents were further asked whether the Fiscal Regime was easy to understand and whether it was responsible for the CGT disputes that hit the sector between 2010/2014. They were also asked if there was need to harmonize the regime and create a specific Law for Petroleum Taxation. The respondents were asked whether the current petroleum fiscal regime was progressive and if it appropriately balances government and investor interests.

On the structure of the fiscal regime, the respondents were asked whether the PSA system was the best option for Uganda's upstream segment. Furthermore, the respondents were asked whether the royalty rates under the MPSA 2009, considering the country's risk profile, were fair. A question relating to lack of transparency, increasing the uncertainty in the sector and whether PSAs should be made public was also posed to the respondents. For ease of analysis, the responses were evaluated in accordance with the framework criteria as follows.

#### 4.2.1.1 Neutrality

Accordingly, 69.6% strongly agreed and 30.4% agreed that the Fiscal regime was not neutral; however, of those that agreed to a telephone interview in addition to the questionnaire 58.8% noted that neutrality is unattainable. They further said that the current fiscal regime has some neutral taxes like corporate income tax, capital gains tax and withholding taxes. Some noted that even the action of government introducing VAT exemptions was an attempt to bring neutrality to the current fiscal regime.

[247] See 'section C of the Research Questionnaire annexed hereto as Appendix C.

Table below shows the response rates in respect of the neutrality of Uganda's fiscal regime.

***Table* 5.2: Responses regarding the neutrality of the petroleum fiscal regime**

#### 4.2.1.2 Certainty and Transparency

On Certainty and transparency, all the government employees that is, 34.8% of the respondents that replied, agreed that the current fiscal regime was certain, 21.6% disagreed, and 13.2% strongly disagreed while 30.4% were neutral. 65.2% strongly blamed the said uncertainty on lack of a specialized petroleum taxation law. A similar percentage agreed that the uncertainty in the petroleum fiscal regime is responsible for the recent CGT disputes, which involved URA and Tullow Oil and other IOCs.

In addition to the above, 78.3 % strongly agreed while 8.7% agreed that there is lack of transparency as far as PSAs are concerned but only 34.8 % strongly agreed that it has led to uncertainty in the fiscal regime. An equal number strongly disagree that lack of transparency is responsible for uncertainty in the fiscal regime. All those who indicated there was lack of transparency in PSAs also indicated the need to publicise these Agreements. Table 5.3 & 5.4 below show the response rates in respect of the certainty and transparency of Uganda's fiscal regime.

#### 4.2.1.3 Risk Sharing

65.2% strongly agree and 30.4 % agree that risk sharing is an acceptable criterion for measuring the competitiveness of fiscal regime. 82.6% agree that the current petroleum fiscal regime distributes risk between the government and IOCs. On fair distribution of risk, 60.9% agreed, 21.7% disagreed, 8.7% strongly disagreed and another 8.7% where neutral. During the telephone interviews, 76.5% indicated that although there is risk sharing across the sector in policy and law books, on ground, the biggest risk in the exploration stage was carried by oil companies.

All respondents either strongly agreed or agreed that government shares risks with lOCs using, signature Bonuses, Surface Rentals, Royalty rates, Production sharing, State participation, Corporate Income Tax, Withholding Tax, Capital Gains Tax, Stamp Tax, domestic market

obligations, Excise, Import and Export Levies, amongst others. Table 5.5 and 5.6 below show the response rates in respect of the degree of fairness of risk sharing in the petroleum industry.

*Table 5*.5: Responses regarding the Degree of Fairness of risk sharing between lOCs and GoU

*Table* 5.6: Responses on whether the government shares risks with lOCs using surface rentals, royalty rates, production sharing, state participation, corporate income tax, withholding tax, capital gains tax, stamp tax, domestic market obligations, excise, import and export levies

### 4.3.1 Government Take

56.5% strongly agreed and 43.5% agreed that government take is a criterion for measuring competitiveness of a fiscal regime. On whether the government take was bigger than the share IOCs receive, 73.9% agreed, 21.7% disagreed and 4.4% neutral. Respondents were also asked on the level of risk in the petroleum sector in Uganda that it was very high; 30.4% strongly agreed and 47.8% agreed, 13.04% were neutral while only 8.7% disagreed. Table 5.7 below shows the response rates in respect of the government take in the oil and gas industry in Uganda. While table 5.8 shows the risk profile level in the oil and gas industry in Uganda.

***Table 5. 7*** **Responses on whether government take is too big compared to that of IOCs share.**

| | | |
|---|---|---|
| ***Agree*** | ***23*** | ***73.9%*** |
| ***Neutral*** | ***23*** | ***4.4%*** |
| ***Disagree*** | ***23*** | ***21.7%*** |
| ***Strongly disagree*** | ***23*** | ***0%*** |

***Table* 5.8: Responses on level of the risk profile of the petroleum industry in Uganda**

| | | |
|---|---|---|
| ***Strongly agree*** | ***23*** | ***30.4%*** |
| ***Agree*** | ***23*** | ***47.8%*** |
| ***Neutral*** | ***23*** | ***13.04%*** |
| ***Disagree*** | ***23*** | ***8.7%*** |
| ***Strongly disagree*** | ***23*** | ***0*** [c] |

### 4.3.2 Discussion of the Findings

#### 4.3.2.1 Neutrality

From the data presented above, Uganda's Petroleum Fiscal Regime is not neutral. It is littered with pre-production taxes like Signature Bonuses, Royalties, and Surface Rentals. In practice, neutrality cannot be attained and although Uganda's fiscal regime has some elements like Income Tax and withholding taxes, which are based on Economic Rent and therefore associated with neutrality, largely, the fiscal regime is not neutral.

Unlike Uganda, the Petroleum Fiscal system in some oil producing countries like Ghana, exempts the sector from signature bonuses and capital gains tax in the upstream sector. Overall, Uganda fails the neutrality test, a factor that degenerates the level of competitiveness of the current petroleum fiscal system.

#### 4.3.2.2 Uncertainty and transparency

Since Certainty demands that tax laws should be clear, certain and simple to understand[248]: Lack of a special petroleum taxation law, lack of transparency in production sharing Agreements and the scattering of petroleum taxation provisions across different legislations as indicated in the data produced above proves that to a large extent Uganda's petroleum fiscal regime is uncertain. There mere fact that 87% of the respondents indicated the need to make oil agreements public underlines the extent of uncertainty in the sector. In chapter four, this study noted that Ghana has a well-defined petroleum taxation regime built around a petroleum taxation law and its MPA is clear on the taxation of petroleum activities in Ghana; making it a laudable competitive regime. Uganda's petroleum taxation system lacks this kind of robustness.

#### 4.3.2.3 Risk sharing

A competitive petroleum fiscal regime should be founded on a fair distribution of risks between the state and IOCs/investors; otherwise, it loses out to other more competitive Oil frontiers. The majority of the respondents agreed that there is sharing of risks in the industry however; they held that this was just on paper. They indicated that in the upstream especially in exploration activities, the investor, lOCs carry the bulk of risk.

[248] See Heady,

However, the GoU cannot be faulted on this, it's widely known and acceptable practice that host governments especially in the developing world do not invest in exploration activities because; its capital intensive and yet there is a risk of hitting a dry well and losing out thus the risk is left to wealth lOCs. More to that, in case of confirmation of commercial resources, upon production all the costs incurred are recoverable under cost oil concept[249]. Besides, Uganda has carried its own share of the risk by exempting all products used in upstream petroleum from VAT. To this end, the government carries a share of the risk through incentives; however, since it must earn a certain amount of revenue to fulfil its development obligations, the remaining risk share is allocated to oil companies. This way there is a balance between its objectives and investor interests.

#### 4.3.2.4 Government Take

It includes both tax and non-tax benefits. Compared to Ghana that has a government take of just about 40%, bearing in mind that over 70% of the respondents indicated that Uganda has a very high-risk profile, Uganda's take of above 80% is on the high side and though competitive as seen in the eyes of the government, to the lOCs it is not competitive . Literature indicates that to be competitive, high-risk nations have to take a smaller share of the profits and relinquish the larger part to investors as cover for the risk in the sector[250].

On the contrary, although Ghana has been lauded as having the best practice in petroleum extraction in sub-Saharan Africa; currently, it is financially struggling and as such may not provide a proper benchmark for Uganda. In the circumstances, Uganda may wish to defy the odds and maintain higher governments take because it has to create value for future generations. Additionally, it has to enhance industrial inter linkages by using funds from the petroleum sector to develop other sectors and advance intra-generation equity. These objectives may not be possible if Uganda taps a smaller take.

### 4.4 Further Analysis.

From the responses to the research questionnaires and telephone interview, it's evident that Uganda's Petroleum Fiscal Regime falls under the contractual system, specifically, production sharing. The current petroleum fiscal system is characterized by both front-end loaded taxes (pre-production taxes) like signature bonuses and surface rentals and back-loaded taxes (profit-

[249] See Mintz, and Chen
[250] See Mintz, and Chen

based taxes. Respondents noted that other than the aforementioned fiscal instruments, the fiscal regime also feature's royalties, production sharing, , state participation, domestic market obligations, a strict ring fence and a sliding scale phenomenon amongst others.

Respondents also noted that from the viewpoint of the government front-loaded taxes increase the competitiveness of the petroleum fiscal regime and ensures that Uganda as the HG earns revenue at the earliest time possible. While investors view the preproduction taxes as unnecessary at this point since the quantity of the resource underground is unknown but merely an estimate. A large number of respondents indicated that investors prefer back-ended profit-based taxes because they take into account economic rent and increase the neutrality aspect of the fiscal regime. According the responses above, the combination of both the pre-production tax, production taxes rates and the non-tax benefits constituting Uganda's petroleum fiscal system pitches the total governments take beyond 80% from a production.

While this is competitive from the side of the Government, respondents noted that investors find this unattractive and therefore not competitive particularly when compared with a peer Petroleum-producing frontier like Ghana. However, Uganda cannot be seen to strictly adopt Ghana's position, because they are some differences in the geological composition of its petroleum resources, and the quality of data, infrastructural differences, and accessibility to international markets and ultimately there is great variance of development targets and policies whether Uganda's fiscal regime is competitive largely depends on which side of the coin you are, while the Ugandan view will argue that its competitive, the investors will assert that it is not competitive because both parties' interests are non-complimentary. It is hard to get a converging arena in terms of interests.

Nonetheless, at the end of the day, its agreeable that the current fiscal regime is not neutral, it is shrouded in uncertainty since the Oil Agreements are hidden, that there is unbalanced risk sharing since the investor bears most of the risk in the sector and government only steps in via carried interest. As such, all factors constant, largely, the current petroleum fiscal regime is not as competitive.

Nevertheless, although the GoU currently takes its benefits through signature bonuses and surface rentals; it gives back to the investors by availing those potent geological data, exempting them from excise duties and VAT on all Machines that they import into the country for the purpose of oil exploration and field appraisals. In addition, when production resumes,

investors will be allowed to recoup all the costs they have incurred in fields that turned out positive, they are allowed a thin capitalization ratio to enhance debt financing for oil projects and can carry forward their losses. This way there is a balance between the objectives of the GoU and the interests of investors.

## CHAPTER FIVE

### 5.1 Legal and Regulatory Framework in Uganda's Oil and Gas Industry.

The legal framework that embodies the fiscal regime under which oil companies operate together with geographical, geographical and political factors make a country more or less attractive for investors. Sustainable resource management requires an inclusive and comprehensive national strategy. According to Article 244 of the constitution of the Republic of Uganda as amended, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the government on the behalf of the people of Uganda.

In managing Uganda's petroleum resources, the National Oil and Gas policy 2008 is the key document guiding the sector. The goal of the policy is to use the country's Oil and Gas resource to contribute to early poverty eradication and create lasting value to society.

The petroleum (Exploration, Development and Production) Act 2013 [251] and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013[252] as well as the regulations developed to operationalize these laws. The Oil and Gas Revenue Management Policy of 2012, the public management Act of 2015, was enacted which established the Petroleum Fund, it also includes the Vat Act, and the Income Act.

All these laws and regulations are aimed at ensuring that the Oil and Gas sector is managed well in terms of attracting more investors into the sector and also maximising more revenues into the Oil and Gas industry.

### 5.2 Fiscal Taxation Instruments that Promote Sustainable Investments in Uganda's Oil and Gas Sector.

Uganda's Petroleum Fiscal Regime is a typical developing country regime with signature Bonuses, Rentals, Royalty and Ring-fence among others. Signature bonuses ensure that the government gets upfront revenue to cover administrative costs incurred in the process of procurement and subsequent offer of the license. These bonuses have implications on the cash flow of the companies and increases the discount rate used for discounting cash flows. In

[251] petroleum (exploration, Development and production) Act 2013
[252] the petroleum (Refining, Conversion, Transmission and midstream storage) Act 2013

essence, government pays them in the long run through higher discount rates.[253]

Ugandan has adopted a production sharing contract arrangement. The government is entitled to a Royalty computed as a percentage of gross daily production, such royalty to be in kind or cash at the government's election. The percentage can be on an accelerating scale as production increases. Royalty rates[254] are biddable and will be set out in the license or petroleum agreement.

Under a production sharing arrangement, the contractor is entitled to cost recovery from a specified percentage of gross oil or gas production after deduction of any applicable royalty. Cost recovery may be ring-fenced with costs only recoverable from production from the contract area to which they relate. Unrecovered costs can typically be carried forward. After deduction of royalty and cost recovery, remaining production is split between the government and contractor on a sliding scale as set out in a petroleum agreements, with the government's percentage increasing as daily production increases;

The contractor is required to pay income tax at the standard corporation rate tax of 30 per cent on the proceeds of the sale of their share of profit oil under the petroleum agreement. Contract areas are ring fenced for tax purposes with each contract area taxed as if it is a separate tax payer. Under the Petroleum (Exploration, Development and Production) Act 2013[255] (the upstream Act), signature bonuses are payable on the award of exploration and production licenses and are not cost recoverable. Although not specifically referred to in the Petroleum (Production and Exploration) Act (PEPA), signature bonuses have, according to media reports, been paid in respect of petroleum agreements entered into under the PEPA regime.

It was reported, for example, that the PSAs that were signed on 3 February 2012[256] by Tullow with CNOOC and Total included a signature bonus of US$500,000 and development bonuses of US$2m. The same provisions were retained by the production sharing Agreement of 2016.

A licensee must pay an annual charge calculated on the grant of a license and thereafter annually on the anniversary of the grant until the termination of the license. A participation dividend paid by a resident contractor to a non-resident company is liable to a withholding tax

[253] Oil and gas tax guide for Africa 2015.
[254] Uganda's production sharing Agreement of 2016
[255] Petroleum (Exploration, Development and Production) Act 2013
[256] Uganda's production sharing Agreement of 2012

at a rate of 15 per cent. A lower rate of withholding tax may apply if the dividend is paid to a resident of a country with whom Uganda has a favourable double taxation agreement.

Some of the instruments used in Uganda's fiscal regime have been illustrated in the table 1 below.

| | | |
|---|---|---|
| Rentals | Specific per sq. Km | First exploration period $2.50 per Square Km/year<br><br>Second exploration period $5.00 per Sq. Km Third exploration period $7.50 per Sq. Km Development area subject to a |
| Royalty Incremental | 5%,7.5%, 0%,12.5% | Based on Gross Total daily Production. Where production does not exceed 2,500 5%, 2,500<P4<5,000 7.5%, 5,000<P<7,500 10%, and P>7,500 12.5%. Royalty is paid on a monthly basis. |
| | | |
| Withholding Taxes | 15% | Applicable on dividends payments, Management fees, and interest |
| Allowance for CAPEX | ✓ | All capital expenditures are allowed as a deduction. Deduction based on agreed recovery rules. |
| Allowance for OPEX | ✓ | All Operating expenditures are allowed as long as they are incurred in the production of income included m gross income. |
| Loss carry | | Indefinite loss carries forward (LCF) allowed |
| State Participation | | On carried forward basis. The costs recoverable including interest rate at the LIBOR from the production. |
| Allowance for decommissioning | | All costs incurred for decommissioning are allowed as a deduction from income. |
| Cost Recovery | | After deduction of Royalty, 60% cost recovery limit (CAPEX and OPEX) is allowed. |
| Ring fencing (RF) | | Applies around each Contract Area. In the event that the licensee has more than one contract area, the calculations are done on contract by contract basis. |

| | | |
|---|---|---|
| Signature Bonuses | | Paid after signing. To meet administrative costs. Amounts may change depending on the costs incurred. |
| Thin capitalization Rules | | Debt/equity ratio 2: 1. Interest is allowed to the extent of the rule. |
| | | |

**Table 1: Uganda's petroleum Fiscal Regime**

| | | | **Base of the instrument and other comments** |
|---|---|---|---|
| | Production Sharing | | When Daily Production does not exceed 5,000 (43.5%, 56.5%), 5,000<P<l 0,000 (G5 46%, Co. 54%), 10,000<P<20,000 (G.51%, Co.49%), 20,000<P<30,000 (G.56%, Co.44%), 30,000<P<40,000 (G.61%, Co.39%) |

**Source:** [13]

Table 1 above, shows some of the instruments that are used in Uganda's fiscal regime. These can be further explained in as follows

### 5.3 Production Sharing

Production sharing regimes shares some of the characteristics of a profits tax. In their simplest form, these regimes are roughly equivalent to one based on a profits taxes, allowing the investor to recover costs through an allocation of 'cost oil,' and sharing the remaining 'profit oil.'[257] As a result of the similarity to profit taxes, production sharing regimes share the same pluses and minuses when measured against fiscal objectives. At the same time, some elements of production sharing regimes, such as cost oil limitation, function more like

[257] PSAs of Uganda.

royalties[258] the similarities with profit taxes should not therefore be exaggerated. As opposed to the concessional system Uganda's petroleum fiscal regime is based on the Production Sharing. But in its most basic form a PSC has four main properties. The IOC pays a royalty on gross production to the government, if applicable. After the royalty is deducted, the IOC is entitled to a predetermined share of production for cost recovery. The remainder of the production, so called profit oil, is then shared between government and IOC at a pre-specified share. The contractor then has to pay income tax on its share of profit and cost oil combined, after deductions permitted under tax law[259]. A few systems such as Angola and Russia have used profit oil alone as the base for income tax.

Many PSCs specify annual cost oil allowances either on a sliding scale or state that this variable is biddable or negotiable up to a certain maximum value. Full cost recovery occasionally comes with a time limit attached to it.[260] The share of production set aside for cost oil may decline after, for instance, five years, in which case it works similarly to accelerated depreciation. Unrecovered costs in any year are sometimes but not generally carried forward with interest to subsequent years. Investment incentives (Credits uplift or allowances) may also be provided to allow the contractor to recover an additional percentage of capital costs through cost recovery[261]. The more generous the cost recovery limit is, the longer it takes for the government to realize its take.

[258] Good –fit practice activities in international oil, gas and mining industries source book.
[259] Leper Eric M (1991) Equilibrium under the active and passive monetary and fiscal policies, journal of monetary Economics. 27.1.129-147.
[260] Leper Eric M (1991) Equilibrium under the active and passive monetary and fiscal policies, journal of monetary Economics. 27.1.129-147.
[261] Pigato, Mira. foreign direct investments in Africa , old tales and new evidence , Washington , D.C Bank , 2000

### 5.3.1 Signature Bonuses

Uganda's petroleum fiscal regime is a typical developing country regime with signature bonuses among others.[262] Signature bonuses ensure government gets upfront revenue to cover administrative costs incurred in the process of procurement and subsequent offer of the license. These bonuses have implications on the cash flow of the companies and increases the discount rate used for discounting cash flows. In essence government pays them in the long run through higher discount rates. It can be noted that signature bonuses are well known and highly unpopular with the oil industry. They are in most cases used in mature and competitive areas otherwise may limit further exploration most especially when they are high.[263]

### 5.3.2 Royalties

Before investment companies recoup their investment, royalty provides early flows to the government revenue. They are normally attractive to government as the revenue is received as soon as production commences and are easier to administer. Royalties ensure that companies make minimum payment for the oil and gas they extract[264]. Nonetheless, they raise the marginal cost of extracting oil and can deter investors if imposed at too high a level. These royalties may fetter the development of marginal fields that have been discovered which can lead to abandonment of productive Oil and Gas wells. Royalties are the means by which the resource owner (the state) is compensated for the permanent loss of valuable resources.[265] This is one of the most important rationale for the use of royalties[266]. They also have the advantage for a government in that they are relatively predictable and can help ensure that companies make some payments to government in times of low mineral prices and low revenue.[267]

[262] Pigato, Mira. foreign direct investments in Africa, old tales and new evidence, Washington, D.C Bank, 2000
[263] Leper Eric M (1991) Equilibria under the active and passive monetary and fiscal policies, journal of monetary Economics. 27.1.129-147.
[264] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[265] Leper Eric M (1991) Equilibria under the active and passive monetary and fiscal policies, journal of monetary Economics. 27.1.129-147.
[266] Leper Eric M (1991) Equilibria under the active and passive monetary and fiscal policies, journal of monetary Economics. 27.1.129-147.
[267] Arrow, Kenneth J. and Mordecai Kruz . Public investment, the rate of return, and optimal policy vol. 1. Routledge, 2013.

### 5.3.3 Ring Fencing

Ring fencing rules are important to determine its extent clearly. Given the fact that exploration is risky, it is imperative that ring fence provision is provided to protect government take. Absence of ring fencing can postpone the revenue of the government. This is because as companies that undertake a series of development projects would be allowed a deduction from the income of the projects that are already generating taxable income[268] Companies that have multiple activities within one country sometimes use losses incurred in one project (say, exploration expenses from a new mine that has not yet begun production) to offset profits earned in another project, thereby reducing overall tax payments[269]. Governments can overcome this situation through ring-fencing, the separate taxation of activities on a project-by-project basis, which facilitates the government collecting tax revenue on a project each year that it earns[270]

### 5.3.4 Rentals

These are annual charges paid by the International Oil and Companies to the government on the basis of acreage as a license fee. Usually, exploration license fees and development license fees have different charges, with the latter usually significantly higher than the former. Rental fees are pre-production payments

### 5.3.5 Corporate Income Tax

In some cases, oil, gas companies are subject to the general corporate income tax rate prevailing for all businesses in a country; in other cases, there is a special regime for these extractive sectors[271]. Because petroleum projects require heavy capital and operational investments, rules on how the tax system handles costs and deductions - the deductibility of interest payments, the depreciation of physical assets, the ability to count losses from one tax

[268] Carole. Petroleum Taxation, sharing the oil Wealth, A study of petroleum Taxation yesterday, today and Tomorrow (New York, USA, Rutledge, 2008.)
[269] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[270] Carole. Petroleum Taxation, sharing the oil Wealth, A study of petroleum Taxation yesterday, today and Tomorrow (New York, USA, Rutledge, 2008.)

[271] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

year to offset profits in a future tax year, etc. - play a major role in determining how governments and companies benefit

### 5.3.5 Withholding Taxes

A withholding tax, also called a retention tax, is a government requirement for the payer of an item of income to withhold or deduct tax from the payment, and pay that tax to the government. In most jurisdictions, withholding tax applies to employment income. Many jurisdictions also require withholding tax on payments of interest or dividends[272]. In most jurisdictions, there are additional withholding tax obligations if the recipient of the income is resident in a different jurisdiction, and in those circumstances withholding tax sometimes applies to royalties, rent or even the sale of real estate.[273]

Governments use withholding tax as a means to combat tax evasion, and sometimes impose additional withholding tax requirements if the recipient has been delinquent in filing tax returns, or in industries where tax evasion is perceived to be common. Typically, the withholding tax is treated as a payment on account of the recipient's final tax liability.[274] It may be refunded if it is determined, when a tax return is filed, that the recipient's tax liability to the government which received the withholding tax is less than the tax withheld, or additional tax may be due if it is determined that the recipient's tax liability is more than the withholding tax. In some cases, the withholding tax is treated as discharging the recipient's tax liability, and no tax return or additional tax is required.

### 5.3.6 Allowance for CAPEX

Capital expenditures are the funds that a business uses to purchase major physical goods or services to expand the company's abilities to generate profits.[275] These purchases can include hardware (such as printers or computers), vehicles to transport goods, or the purchase or construction of a new building. The type of industry a company is involved in

[272] Huizinga, Harry. The incidence of interest withholding taxes. Evidence from LDC loan market, journal of public Economics 59.3 (1996) 435-451.
[273] Huizinga, Harry. The incidence of interest withholding taxes. Evidence from LDC loan market, journal of public Economics 59.3 (1996) 435-451.
[274] Huizinga, Harry. The incidence of interest withholding taxes. Evidence from LDC loan market, journal of public Economics 59.3 (1996) 435-451.
[275] Adelman, Morris A. is the oil shortage real? Oil companies as OPEC or CAPEX tax –collectors foreign policy ( 1992)

largely determines the nature of its capital expenditures[276]. The asset purchased may be a new asset or something that improves the productive life of a previously purchased asset. If the asset's useful life extends more than a year, then the company must capitalize the expense, using depreciation to spread the cost of the asset over its designated useful life as determined by tax regulations. Capital expenses are most often depreciated over a five- to 10-year period but may be depreciated over more than two decades in the case of real estate[277]

### 5.3.7Allowance for OPEX

An operating expense results from the ongoing costs a company pays to run its basic business. In contrast to capital expenditures, operating expenses are fully tax-deductible in the year they are made.[278] As operational expenses make up the bulk of a company's regular costs, management examines ways to lower operating expenses without causing a critical drop in quality or production output. Sometimes an item that would ordinarily be obtained through capital expenditure can have its cost assigned to operating expenses if a company chooses to lease the item rather than purchase it. This can be a financially attractive option if the company has limited cash flow and wants to be able to deduct the total item cost for the year

### 5.3.8 Loss Carry Forward

Many tax systems allow a taxpayer to deduct losses generated in one year from income earned in a subsequent year. Such a system takes into account the heavy up-front costs necessary to get a project off the ground. But in an effort to prevent unfettered carry-forwards from overwhelmingly reducing long-term revenue generation, some governments have placed limits on them, restricting either the period of time that a loss can be kept on the books or the amount of income in any given year that can be offset by past losses[279]

[276] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

[277] Adelman, Morris A. is the oil shortage real? Oil companies as OPEC or CAPEX tax –collectors' foreign policy (1992)

[278] Verbugge , soffie et al. Methodology and input availability parameters for calculating OPEX and CapEX costs for realistic network scenarios , journal of Optical Networking 5.6 ( 2006) 509-520

[279] Shao, Jun and Bob Zhong , last observation carry forward and last observation analysis statistics in medicine 22.15.(2003) 2429-2441.

### 5.3.9 State Participation

Governments embrace state participation in their natural resource sectors in a variety of forms, depending on their objectives, their circumstances and issues encountered. Under all forms, except the "free" equity form, the most common vehicle for state participation is the NOC or NMC, collectively referred to here as national resource companies (NRCs)[280]. In some countries, however, the state has exercised sector participation without the intermediation of the NRC.

With Full Equity Participation; Possibilities under this heading include the state either: (1) going ahead with investments on its own through its NOC or SME, but without private sector involvement; or (2) investing with the private sector from the start of operations by acquiring either a majority or minority interest in an incorporated joint enterprise or a participation share in an unincorporated joint venture. Carried Equity Participation; Carried equity participation may take several forms. The most frequently encountered is the partial carry, usually in the context of a state/private investor unincorporated joint venture.

Under this approach, the private investor "carries" or pays the way of its NRC partner through the early stages of a project exploration, appraisal, and possibly even development. Free" Equity Participation; So-called "free" equity participation is a simple grant of an equity interest directly to the state without any financial obligation or compensation to the private investor. Once a feature in mining, where it was regarded as a payment for the right to exploit the mineral resource, and is still "on the books" in many countries, it is now found only rarely in new agreements.

### 5.4 Allowance for Decommissioning Costs

The decommissioning regime protects the taxpayer from bearing decommissioning costs. The government notices requiring recipients to submit a decommissioning programme for approval, which then gives rise to a decommissioning obligation. While the liability usually rests with current licensees, it can also extend to other parties, such as owners of the offshore installations, former licensees and their respective parent and associated

[280] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986

companies.[281]

### 5.5 Cost Recovery

Under most PSC's the cost oil regime is usually designed to allow the IOC"s to recover exploration, development, production costs and expenses from the share of production or gross revenues.[282] This share will usually vary depending on the country and or the characteristics of the field in question[283]. Cost oil can be split into two further categories, the Indonesian model which allocates a certain percentage of production for cost recovery, sometimes known as the cost recovery limit[284]

### Thin capitalization Rules

Interest payments on loans are often deductible for income-tax purposes. Integrated international companies sometimes finance subsidiaries in extractive-rich countries with extremely high levels of debt in the form of related-party loans, which means that interest payments made from the subsidiary to its payment company are deducted, limiting the subsi diary's tax liability. Governments can combat this problem by capping the level of debt that an extractive subsidiary can take on in relation to its total capitalization, or by mandating that interest payments made on debt exceeding a certain debt-to-equity ratio will not be deductible for tax purposes.[285]

### Tax Credit

This is an amount of money that a taxpayer is able to subtract from the amount of tax that they owe to the government. The value of a tax credit depends on what the credit is being provided for, and certain types of tax credits are granted to individuals or businesses in specific locations, classifications like the oil and gas industries.[286] Unlike

[281] William Housing R and Charles J. Meyers. Oil and Gas law. Vol.2M. Bender, 2010.
[282] William Housing R and Charles J. Meyers. Oil and Gas law. Vol.2M. Bender, 2010
[283] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[284] Firke. Leland E. Federal Taxation of Oil and Gas Transactions. Banks, 1971.
[285] Buetner Thiess et al. The impact of thin-capitalization rules on multinationals financing and investment decisions (2006).
[286]. Buetner Thiess et al. The impact of thin-capitalization rules on multinationals financing and investment decisions (2006)

deductions and exemptions, which reduce the amount of your income that is taxable, tax credits reduce the actual amount of tax owed. Governments may grant a tax credit to promote a specific behaviour, such as replacing older appliances with more efficient ones, or to help disadvantaged taxpayers by reducing the total cost of housing. The government of Uganda is providing a wide range of tax incentives to businesses to attract greater levels of foreign direct investment (FDI) into the country. Yet this study shows that such tax incentives are leading to very large revenue losses and are at any rate not needed to attract FD I.

Therefore, it can be pointed out that a wide range of fiscal instruments exists and can be found in practice. Some of them are common to all sectors in the economy, were as others are specific to the oil and gas sector itself. Most fiscal regimes use a number of fiscal instruments in combination.[287]

**The Revenue potential of Uganda's Petroleum Fiscal Regime**

Between the years 1996/97 and 2007/08 Fiscal Years, the revenue/GDP ratio in Uganda has been marginally growing from 10% in to 13.2%. It is also showed that the Total government expenditure has been hovering around 22% of GDP.

This indicates that there is a primary deficit of an average 8% over the last decade. Most of this has been financed through grants and loans from both multi-lateral and bilateral development partners. The impulsiveness, exhaustibility and the uncertainty of oil revenue actually exacerbates the problem.[288]

The Oil and Gas sector will generate a significant amount of different cash streams that will in turn generate revenues for Government. Streamlining the collection of these revenues is essential to ensure transparency and accountability. In this regard, all revenues are collected and deposited in a special petroleum fund to be established in Bank of Uganda (BOU).

The revenue that can be gotten from the Oil and Gas has to be shared among many

[287] Buetner Thiess et al. The impact of thin-capitalization rules on multinationals financing and investment decisions (2006)
[288]Elijah Okupa , Developments in the oil and gas sector in Uganda , the parliament issue one , 2012.

stakeholders including the local governments. If this is not well managed, can be a source of destabilization to local government financing, budgets and investments. This means that in order to avoid the potential to undermine local government operations, oil revenues to be shared with the local governments ought to be pre-specified .In this regard, a maximum of 7 percent of royalty revenues pricing from gross oil and gas production was stipulated to be shared with local governments and communities, which are directly affected by oil production. The remaining 93% is retained for the benefit of the entire country[289]

Given the expected appreciation of the currency that would come with sustained large foreign in lows and the effect of such appreciation on export sector competitiveness. Therefore, fiscal regime focuses on other factors that determine export competitiveness. The country's land-linked situation, high transport costs, high fuel costs, and inadequate energy supply, remain important considerations in this respect. Oil and gas revenue should optimally be applied to generate growth, productivity gains and also address the geographical disadvantage by linking the country to the rest of the world in addition inter sectorial linkages..[290]

The petroleum regime provides early flows to the government before companies recoup their investment revenue.[291] They are attractive to government as the revenue is received as soon as production commences and are easier to administer.[292] Therefore, the use of instruments like Royalties ensures that companies make minimum payment for the Oil and Gas they extract. However, they raise the marginal cost of extracting Oil and can deter investors if imposed at too high a level and may also discourage development of marginal fields that have been discovered and lead to abandonment of productive oil and Gas wells. The fiscal regime was designed to ensure that government has guaranteed revenue in any accounting period during production phase either from royalty and cost recovery limitation.[293]

[289] Bainomugisha .A. Kivengyere H..& Tusasirwe, B. Escaping the oil curse and, making poverty history. A review of the oil and gas policy and legal framework for Uganda. (N0.20) Acode , Advocates Coalition for Development and Environment (2006).
[290] Mirrlees. J..Optimal Tax Theory. A synthesis, Journal of the public Economics vol 6.327-358(1976)
[291] Carole. Taxation of oil and gas Revenue sector. Issues and countries. The United Kingdom, the Energy journal vol.3, 39-50(2006)
[292] Emil .M.s. et al. Revenue from the oil and gas sector, issues and country experience, in fiscal policy formulation and implementation in oil-producing countries 45-83. ( J.M.Davis, et al ed).( New York, USA, IMF Graphics section, 2003)
[293] Emil .M.s. et al. Revenue from the oil and gas sector, issues and country experience, in fiscal policy formulation

### 5.5.1 Sustainability of Uganda's Petroleum Fiscal Regime

Any fiscal system should be designed to balance between government and company objectives in order to sustain the benefits to both parties. The system should ensure that the investor earns the expected return on investment, to encourage further growth in the sector[294] the instruments are country specific, because peculiarities of different countries, the design of the fiscal regime differ accordingly.[295] In the global competition for capital, and technology, all countries have their peculiar boundary conditions, concerns and objectives that influence the development of policy, strategy and tactics. Some of the instruments that have helped in sustaining investment in Uganda's extractive industry are illustrated in table 2 below.

| S/No | Fiscal Instrument | Base and its implication |
|---|---|---|
| **1** | Brown Tax (BT) | Is a cash flow tax and consequently incorporates the different costs an investor incurs in each period? [49] It is based on economic rent and satisfies the criteria of neutrality and risk sharing. It imposes an unacceptable level of risk to the |
| 2 | Resource Rent Tax (RRT) | Designed to captures economic rent and is neutral. It is a progressive tax and is based on deemed profitability after an |
| 3 | Large Ring Fence | Allows cost deduction of dry wells from revenue generating wells |
| 4 | Tax holidays | Investor allowed not to pay tax for a certain period of time. Encourages investment in new and marginal areas. |
| 5 | Tax Abetment | Deliberate reduction of the tax base or tax rate of a specific sector. Encourages growth of strategic sectors. |
| 6 | Reinvestment tax credits | Encourages reinvestment of profits in certain sectors. |
| 7 | Immediate expensing | Allows the company to deduct the costs incurred in earlier years of production. This can be reinvested in other projects. |

and implementation in oil-producing countries 45-83. ( J.M.Davis, et al ed).( New York, USA, IMF Graphics section, 2003)

[294] Daniel .J. International Petroleum Fiscal Systems and Production Sharing contracts, (Tulsa Oklahoma, USA, Penn well publishing company, 1994.

[295] Daniel .J. International Petroleum Fiscal Systems and Production Sharing contracts, (Tulsa Oklahoma, USA, Penn well publishing company, 1994.

**Table 2: Fiscal Instruments that attract Investments and Promote Sustainable Financing in Uganda Oil and Gas sector.**

Uganda's fiscal regime provides generous allowable deductions including initial allowances, decommissioning costs, loss carry forward, and tax exemption of machinery and equipment and Depreciation allowances. The question is whether with the price volatility and uncertainties about how much can be recovered, the fiscal regime can generate enough revenue to sustain Uganda's primary non-oil deficit.[296]

### 5.5.2 Brown Tax (BT)

This is a cash flow tax and consequently incorporates the different costs an investor incurs in each period. It is based on economic rent and satisfies the criteria of neutrality and risk sharing. It imposes an unacceptable level of risk to the government. Regardless of its advantages, Brown Tax is not a popular option in practice because it imposes unacceptable level of risk to the government

### 5.5.3 Resource Rent Tax (RRT)

This is in most cases designed to captures economic rent and is neutral. It is a progressive tax and is based on supposed profitability after an investor earns a minimum rate of return. The host governments face the challenge of how to tax an industry that is characterized by the variable quality of resource endowments and economic conditions for exploiting petroleum deposits that are unpredictable. The knowledge that higher quality deposits may generate substantial resource rents, particularly at times of elevated commodity prices, leads to a focus on how the tax system can be designed so as to capture resource rents, while maintaining the incentives that assure that investors will deploy capital to undertake the risky business of finding and exploring petroleum deposits.

### 5.5.4 Tax Holidays

With Tax holidays, the investor is allowed not to pay tax for a certain period of time which encourages investment in new and marginal areas.[297] This means that tax holidays

[296] Blinder, Allan S and Robert M. Solow, does fiscal policy matter? Journal of public Economics 319-337.(2006)
[297] Blinder, Allan S and Robert M .Solow, does fiscal policy matter? Journal of public Economics 319-337.(2006)

provide the investor with a temporary reduction or exemption from taxes and duties for a period of years, probably as long as five to ten years. They are normally used to promote investment based on a zero taxation for a specific period. [298]

### 5.5.5 Tax Abatement (TA)

This is a reduction in the level of taxation faced by an individual or company. Examples of abatement include a tax decrease, a reduction in penalties or a rebate.[299] For this case, Tax Abatement involves the deliberate reduction of the tax base or tax rate of a specific sector and encourages growth of strategic sectors. [300] This means a reduction of or exemption from taxes granted by the Ugandan government to the investors for a specified period, usually to encourage certain activities such as investment in capital equipment.

### 5.5.6 Renegotiating and Updating Tax Regimes (RUTR)

Some countries normally experience difficulty with renegotiating and updating tax regimes although mature states may be able to have stable tax regimes. In most cases, the states that privatize loss-making companies, or recovering from civil war say like in Northern Uganda, may make certain tax concessions or provide certain tax incentives in order to attract early investors.[301]

This may call for the government to demand a renegotiation of the fiscal package as it gets a more established or stable record.

### 5.5.7 Large Ring Fence

This involves a protection-based transfer of assets from one destination to another, usually through the use of offshore accounting. A ring fence is meant to protect the assets from inclusion in an investor's calculable net worth or to lower tax consequences. [302] There

[298] Blinder, Allan S and Robert M .Solow, does fiscal policy matter? Journal of public Economics 319-337.(2006)
[299] Morse George W, and Michael C. farmer Location and investment effects of a tax abatement program, National Tax Journal (1986) 229-236.
[300] Morse George W, and Michael C. farmer Location and investment effects of a tax abatement program, National Tax Journal (1986) 229-236.
[301] Moore.C.R.K. Perspectives on the valuation of upstream Oil and Gas interest, journal of World Energy Law and Business, Vol.2. No.1, 24-42, (2009)
[302] Moore.C.R.K. Perspectives on the valuation of upstream Oil and Gas interest, journal of World Energy Law and Business, Vol.2. No.1, 24-42, (2009)

are many legal options available in many countries to ring fence assets, although many have caps that are set at a percentage of one's net worth. The main motivation for moving assets (or capital) into a ring fence is to free it from undue restrictions, tax burdens or other country-specific laws. Property or assets held outside a nation's jurisdiction cannot have claims brought on them, so they become "untouchable" by the investor's home country.

### 5.5.8 Reinvestment Tax Credits

These are a powerful economic development tools designed to drive investment to the state's urban centres and other economically distressed communities without depleting valuable state bond moneys. Under the Reinvestment tax credits, the state may provide funds in tax credits over a ten-year period to support projects that create significant jobs and capital investment in these unrecovered areas.

### 5.5.9 Immediate Expensing

Immediate expensing allows companies to deduct the cost of capital purchases at the time they occur rather than deducting that cost over many years based on cumbersome depreciation schedules. [303] Expensing is the proper treatment of capital expenditures. Depreciation raises the cost of capital and discourages companies from hiring new workers and increasing wages for existing employees. Immediate expensing for all new plant and equipment costs for any industry or type of equipment would allow newer equipment to come online faster, which would improve energy efficiency and overall economic efficiency[304]

## 5.6 Revenue/GDP Ratio

The revenue/GDP ratio has been marginally growing from 10% in 1996/97 to 13.2% in 2007/08 Fiscal Year. Total government expenditure has been hovering around 22% of GDP. This indicates a primary deficit of an average 8% over the last decade. This has been financed through grants and loans from both multi-lateral and bilateral development partners. The volatility, exhaustibility and the uncertainty of oil revenue actually

[303] McDonald, Stephen L. Distinctive tax treatment of income from oil and gas production, Natural Resources.J.10 (1970).97.
[304] Galvin, Charles, O. the Ought and Is of Oil and Gas Taxation, Harvard Law Review (1960) 1441-1509.

exacerbates the problem.

Sustainability of oil revenue is at a critical stage for the government to meet the expectations of the public and save for the future generations. Intergenerational equity matters, since oil is an exhaustible resource which when depleted cannot be renewed.

This means that the government should therefore ensure that the fiscal regime generates the required revenue to meet the demands of the present and the future generation. It can be noted that in order to achieve sustainability the fiscal regime should be able to finance the non-oil primary balance deficit for newly producing countries.[305]

Sustainability of the fiscal regime is measured by its neutrality, stability, and flexibility, risk sharing and equitable[306]. For purposes of this study however, sustainability is measured by its ability to generate oil revenue to finance the non-oil primary deficit. The concept of permanent income framework, which considers government wealth from oil revenues, is a better indicator of fiscal sustainability[307]. The study uses the non-oil primary balance to assess the revenue potential of Uganda's Petroleum Fiscal regime.

Considering the estimation of Revenue from Oil in Uganda, It has been estimated that Uganda has 2 billion barrels of oil reserves. Assuming a recovery rate[308] of 50% implies that one billion barrels of oil will be recovered. Based on this, a production profile was developed in order to estimate annual government and company take based on the base fiscal regime. The analysis focused on the technical relationship between the rate of extraction and ultimate recovery of primary drive mechanism because it is difficult at this stage to forecast recoveries from secondary and tertiary mechanisms. The model assumed a production to reserve ratio (P/R) of I 0% at the peak. The (P/R) [309]provides an excellent insight on how quickly reserves are produced once they come on stream. The estimated

[305] Galvin, Charles, O. the Ought and Is of Oil and Gas Taxation, Harvard Law Review (1960) 1441-1509.

[306] Galvin, Charles, O. the Ought and Is of Oil and Gas Taxation, Harvard Law Review (1960) 1441-1509.

[307] Ahmed, Al-K... Forward-Looking Approach for Fiscal Sustainability. A Case of Egypt, Indonesia, Kuwait, Saudi Arabia and the United Arab Emirates, 2005.

[308] P&R is the percentage of total ultimate recoverable reserves for oil or gas field produced in a peak year of production and is expressed as a percentage (Daniel and David, 2002). The P&R ratio provides the percentage of oil produced in the peak year. It's also gives the basis for determining the rate of decline after the peak production level.

[309] With improved and enhance recovery methods, Norway managed to increase recovery rate from 25% to 45% Offshore (Farouk, 2006) Recovery rate can even increase to 60% with the use of modern and efficient technologies.

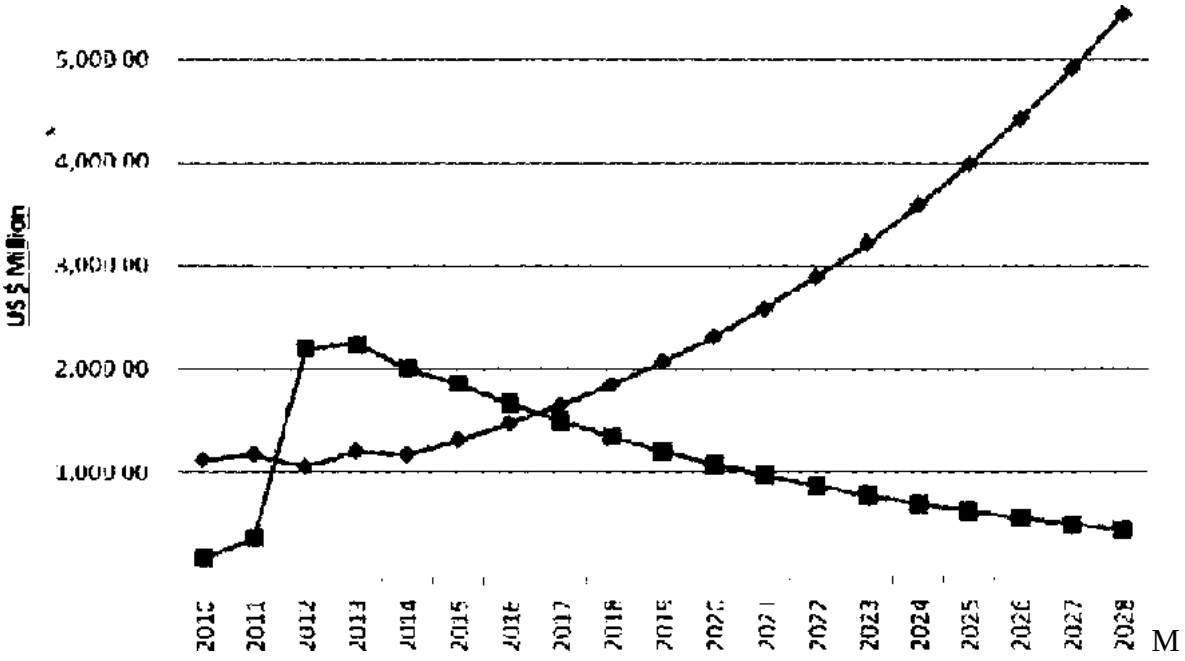
production profile provides the basis for calculating the Government take based on the fiscal regime and at the assumed price of oil.

Uganda will have to wait longer an anticipated. The results indicate that, to fully finance the non-oil primary deficit, the annual production should range from 100-47 million barrels of oil at a price higher than $35 per barrel. It is therefore imperative that in years when Government receives more revenue than expected, it should save to bridge the gap during shortfal1s64

***Figure 3: Estimated Oil Revenue at US $35 a Barrel vis-a-vis Non-Oil Primary Deficit***

**6,000 00**

♦ Ncr Oil Primary Deficit LS$




^-II-Estina:cd Revenue from Oil USS COO

*Source*: [65]

Government Take vs. Company Take; Based on the cost assumptions in the model, Uganda's Petroleum Fiscal regime on average delivers 65% to government and 35% to the companies.

However, in the first two years, the government take was calculated as 31% and 32% respectively. When production is at the peak, government would start taking a lion's

share of the gross revenues ranging from 62% to 74%.

The government share can range from as high as 90%***Source*: [66]**

or more Venezuela), to as low as 25% (Ireland); however, in both cases the incentive to maximize present value exists throughout the range (Daniel, 2003). The share of revenue is sensitive to the volatility of prices, cost, production and the discount rate. A high percentage of the revenue is obtained in the middle of production. At the till end, revenue share for the government is relatively low. This can be seen in the figure 2 bellow.

***Figure 4: NPV at 12%, Government Take Vs Company Take***

**^^—Govt Take DCF at _IS525 per barrel ($, 'O OOl^^—Govt Take: X: Fat US$35 'J.!' band(000)**

**----Govt Take C'Cr at JS545 per barrel ('OOO> Govt Take Fat US! 60 3e- barrel fOOO)**

**--- Co. Take ocrAt 525 15 000) ----Co. Take Der at S35 |!','OOC)**

**—-co. lake Llu At 5 a.b(5 uoo) —^—r_o. lake Llci At 5bO {Volll:)**

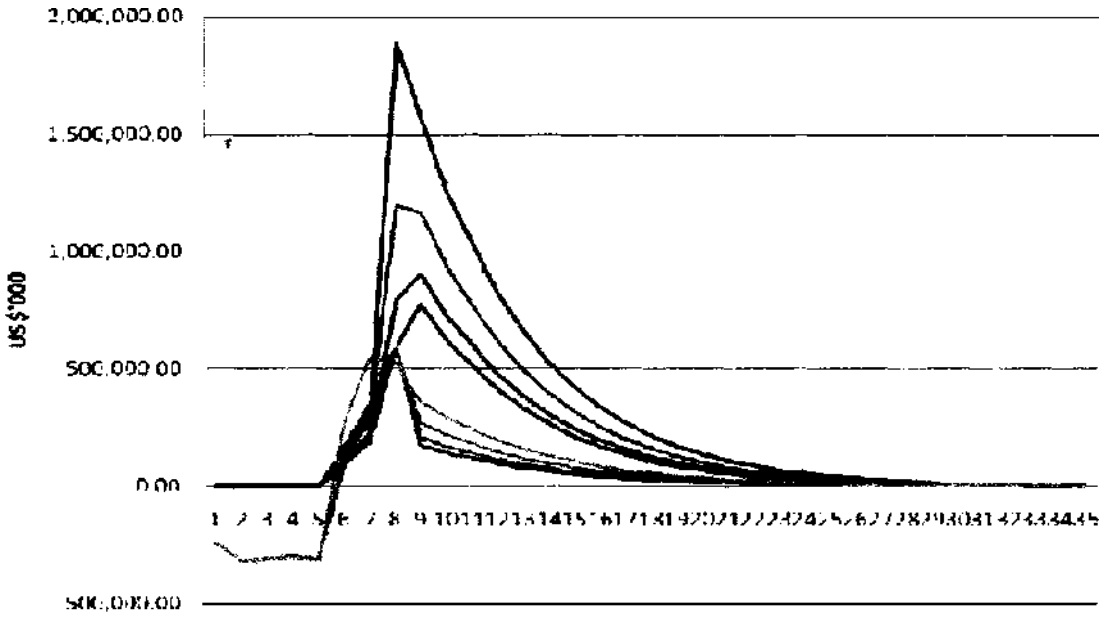
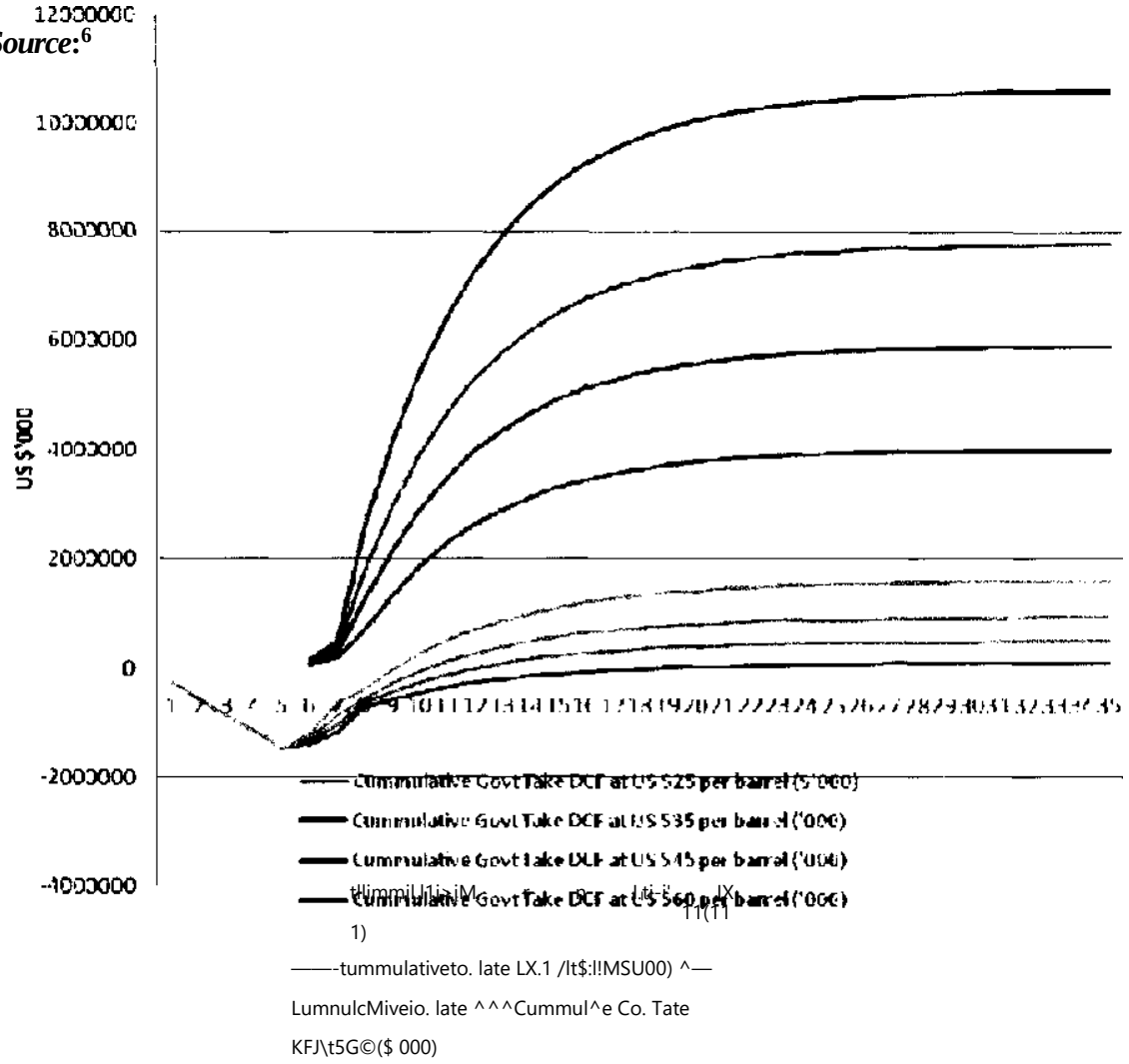



**Figure 4: Cumulative NPV, Government Vs Company Take**

***Figure 5**: Government Take at Price US $25 per Barrel.*

***Source:***[6]




Source:[67]

Considering the implications of Volatility in Oil Prices and Changes in the Discount Rate; a sensitivity analysis of the volatility of oil price[69] of $25, $35, M5, and $60 was done. The results indicate an increase of NPV for both parties. However, an increase in prices would benefit companies more than the government. This is due to the presence royalty in the fiscal regime.[70]

A higher price per barrel reduces the payback period (see Figure 3 above). The discount rate has implications on the NPV of both parties. Higher discount rates reduce the NPV.

The fiscal regime has always tried to achieve sustainability in terms of its neutrality, flexibility, stability, risk sharing and equitable not forgetting its ability to generate oil revenue to finance the non-oil primary deficit. Understanding the permanent income framework, which considers government wealth from oil revenues, is a better indicator of fiscal sustainability.[71]

With regards to neutrality, the neutral tax is the one that leaves the pre-tax ranking of project results the same as the after-tax ranking. This means, a decision by the investor before tax will remain the same after tax is applied. Fixed charges and fees which are not targeted on profit or rent such as royalties and bonuses will have negative repercussions on investment neutrality. In this case, the petroleum fiscal regime has not been as that much neutral due existence of royalties and bonuses which are not targeted on profit. Other such taxes albeit on a lower degree include rental charges or license fees[72]

The instruments have also been effective for oil revenue management in Uganda in a bid to fulfil the strategic objectives of the National Oil and Gas Policy (NOGP) and the Oil and Gas Revenue Management Policy (OGRMP) and also adapt to the country context.

This is coupled with the ability to stabilize budget expenditures even in a highly volatile economic environment, adapt to the pace of increase in the administration's and the economy's absorptive capacity, and allow oil revenues to be invested in the local economy when and where their positive impact would be the highest.[73]

Uganda's oil and gas fiscal regime m also provides some allowances and incentives to the investors. The rights to explore and produce oil and gas resources and assets and expenditures in respect of exploration and development are depreciated at a favourable rate. This has also enhanced the industry to boom.

Tax and royalty, production sharing, or state participation, have also been made fiscally equivalent. A participation share assigned to the state without payment, for example, approximates a tax on profit distributions at the same rate. Different contract structures, nevertheless, apportion risks differently between the parties and thus affect stability and credibility[74]

The discovery of oil and gas presents a unique opportunity for Uganda's to accelerate its development process, given that the sector is expected to generate significant additional revenues for investment. However, utilization of these resources will take into regard the economy's absorptive capacity in order to sustain the gains made in the last two decades in the areas of macroeconomic stability, economic diversification, structural transformation and governance.

Sustainability of oil revenue is critical at this stage for the government to meet the expectations of the public and save for the future generations. Intergenerational equity matters, since oil is an exhaustible resource which when depleted cannot be renewed. [75] The government should therefore ensure that the fiscal regime generates the required revenue to meet the demands of the present and the future generation. In order to achieve sustainability, the fiscal regime should be able to finance the non-oil primary balance deficit for newly producing countries[76]

The current external financial support is in form of direct support through the budget (loan and grants) and off budget - through bilateral and multilateral arrangements, and through NGOs. This support has been targeted towards both infrastructure and social development programmers. However, given the resources available, the focus of Government shall be directed towards asset formation, through mainly infrastructure investment. On the basis of the estimated production profile thus far, production is projected to start at a modest daily output of about 20,000 bpd, which will gradually rise to 60,000 bpd, and further to 160,000 bpd by the end of the 15th year, and in line with demand projections. From these projections, it's clear that Uganda's oil output will not be sufficient to meet all the financing needs nor replace the external support in the near term. Therefore, Government will continue to engage development partners and solicit for external assistance which is consistent with our growth and development objectives. New borrowings will be done in line with the National Debt Strategy and the Partnership Policy.

Due to the volatility of oil prices, oil revenues can vary enormously from year to year. Past experiences of oil price developments confirm that prices tend to follow volatile patterns and have been known to change by as much as 50 percent or more from one year to the next. Short term prices shocks can result in even sharper movements in revenue flows. Given the volatility associated with oil revenues, this will present a persistent governance challenge with regard to fiscal policy and investment. Protection of the budget from potentially large fluctuations in oil revenue is a big challenge and must be managed in order to maintain macroeconomic stability[77]

Petroleum fiscal regime reflects the actual conditions on the ground. For it to effectively be implemented and achieve its objectives, the geological prospectively of a given area, technical competencies, infrastructure development, and the environment should be

favourable. It should therefore be designed to reflect flexibility, neutrality and stability to sustain government's desire to maximize revenue over short and long run, and above all sustaining investment. The regime should be internationally competitive to reflect the risk inherent in the petroleum sector relative to other sectors. Apparently, oil revenue could not be relied upon to achieve all the expectations. Revenue from non-oil sector should therefore be enhanced. Effort should be made to increase collections from the non-oil taxes bases.

Sustainability curse takes place through the extreme volatility of oil and gas revenues, which can lead to wastage, boom and bust cycles, and excessive borrowing. Wastage arises out of the pressure to expand expenditure beyond the execution capacity of the economy and ensuing poor quality programs. Further, it could also arise from frequent upward and downward adjustments of expenditure (in line with unpredictable revenue inflows as a result of volatile price movements) and in the process impacting on Government spending programs. Excessive borrowing arises from the notion of anticipating future oil booms, which is used as a basis to guarantee borrowing. [79]

The estimate of the average level of oil and gas revenue which can be sustained over the long term is based on realistic and relatively conservative projections of future oil prices, so that Government does not incur expenditure commitments which will subsequently prove unaffordable because of oil revenues falling short of the forecast levels. A mechanism will be put in place to determine a benchmark petroleum price, for purposes of determining the amount of revenues from petroleum activities to flow into the budget

### 5.6.1 Country Comparison of Petroleum Fiscal Regimes.

Fiscal regimes apply according to culture, history, social and political situations of countries or jurisdictions in which they are imposed. No country's conditions are the same and attempts to replicate the fiscal patterns of one state in another will invariably fail. The time the contracts were negotiated and the nature of the reserves, whether offshore or onshore is a major consideration in a fiscal regime[310].However, a study of other regimes can provide lessons, good practices and standards.

310

**Norway and United Kingdom**

The Norwegian petroleum system[311] is based on the taxation of the entity rather a specific asset and licensee and it doesn't have ring fencing, its taxes includes among others royalty bonuses, income tax rate resource rent tax and production sharing Agreement.

The united kingdom applies the low marginal rate taxes compared to Norway that almost charges similar taxes like royalty tax that was abolished in U.K because of its declining oil reserves which have become uneconomically viable for the U.K government to charge more revenues compared to Uganda and Norway that have recently discovered huge reserves of proven oil .Norway is in the north sea and Uganda in the Albertine region. This is a huge determinant in designing the fiscal regime of any country. However higher taxes must not be attributed to vibrant fiscal effective regime but rather the type of oil and its uplift costs of production which is very critical in an effective fiscal regime. Therefore, its Uganda and Norway that still maintains the royalty tax since Britain abolished this form of tax due its dwindling oil reserves.

Britain offer a more generous tax regime compared to Norway and Uganda that have progressive income taxes that are very high which includes royalty, bonuses and many other taxes. All these taxes are aimed at ensuring that the countries benefit from its Oil and Gas resource. However Uganda being a young Oil province with low levels of investment need to structure the fiscal regime which can attract investors.

Much has Uganda has been able to catch up somehow in its quest for an effective fiscal petroleum regime, more still need if Uganda is benefit from its black gold in ensuring that it effectively benefits unanimously in oil resource.

Uganda's royalty for high value minerals is based on gross value of the minerals based on the prevailing market price yet minerals are subject to ad volarem rates, the value would be gross revenues from the fact sale or free on board if the mineral has not been sold. This would deny the host nation more royalty die to technical calculations that are disadvantageous to the government. Therefore, there is need to have more effective royalty assessment.

There is need to adopt a uniform manner of determining the chargeable income of resources.

[311] Section 23 of Norwegian petroleum Act.

Companies should be included income tax Act. This will reduce the loss of incomes that would have been gotten by the government if there is a uniform for measuring it.

Midstream facilities need special income Act that treats the apportionment of costs and revenues in a simple manner in order to prevent tax noncompliance in the midstream where the government should get more monies. VAT income should also be focused on the upstream to cater for the linkages in that sector.

Oil companies should compulsorily register for Vat registration regardless of whether they are at profit or not, this would issue more tax inflow within a long run.

### 5.6.1 Angola

The Angolan petroleum fiscal regime is often regarded as a model that succeeded in establishing a balance between investors' and the state interests. Some argue that Angolan PSCs have onerous components, including relatively low and fixed cost oil, as well as high income tax plus high signature bonuses to secure the initial concession. It should be remembered though that the signature bonus is a cost freely volunteered by the investor to win a competitive bid for the lease in question. Moreover, these elements are somewhat balanced by the absence of explicit royalties and an IRR-based sliding scale for profit oil (the higher the achieved rate of return, the higher the government share of profit oil).

Very high prospectively also underpins the fiscal structure; recent exploration success in Angola has been amongst the best of any offshore basin, with a number of large discoveries.

Given this balance, Angola has clearly designed a fiscal regime that both encouraged a sustained high level of investment from IOCs and generated substantial revenues to the state. In 2007, Angola received in excess of $ I 8 billion in revenues from the petroleum sector (including Angola), according to official figures from the Angolan ministry of finance. The authorities have also taken advantage of the competitive instincts of the IOCs by awarding licenses on the basis of the largest signature bonus.

Angola is a long-established petroleum province with exploration and production activities that can be traced back over I00 years. However, sustainable activity in the petroleum sector did not really get into gear until the 1980s, several years after independence and the end of the civil war. Initial efforts were focused on the onshore production and shallow water

provinces and by 1990 production had reached nearly 500 thousand barrels per day. However, the real success story for Angola is the deep water which was licensed in the early 1990s and has resulted in a series of world class discoveries.[81] many of these are now in or soon to enter production. As a result, Angolan production is on steeply rising trend passing 1.7 million barrels per day in 2007 and expected to reach 2.5 million barrels per day by the early years of the next decade.

Angola has built a solid reputation in the oil industry both in Angola and abroad. This is a direct result of strong relationships with the wide range of oil companies which operate, or which have interests and investments, in Angola. As a signal of Angola's capability, the company secured its first operated license in 2003. Most of Angola's exploration costs are carried by the IOCs and reimbursed with interest from its share of production.

The Angolan government encouraged inward investment from the IOCs by offering a stable and competitive fiscal regime based on production sharing contracts. The fiscal terms for each PSC differ and are tailored to expected opportunities from each license area. Nevertheless, there are many common features and similarities between contracts are greater than differences. Typical features are: No royalty; Cost oil 50 per cent; Uplift - 40 per cent of capex; Depreciation 4 year's straight line; Profit oil splits are formulaically linked to an earned project rate of return. Typical IRR-based profit splits are given in Table 3 below. This became the basis of all licenses awarded since 1991. Prior to this date the profit splits on PSCs were linked to cumulative production; Income tax 50 per cent

**Table 3: Angola's Profit Oil Splits[83]**

| Rate of return (%) | State share (%) | Contractor share (%) |
|---|---|---|
| Nominal Less than 15 | 25 | 75 |
| 15 -20 | 35 | 65 |
| 25-30 | 55 | 45 |
| 30-40 | 75 | 25 |
| Over 40 | 85 | 15 |

The benefit of this fiscal structure is that the government take automatically rises as the project profitability increases, either as a result of higher prices, higher reserves or lower costs. This aligns the requirements of investors, for downside protection and the needs of the state to

capture the project upside. It is notable that countries such as Angola with such responsive or progressive fiscal terms have not needed to intervene to increase government take with higher prices. This happens automatically. Angola is a good example for Uganda should structure her oil fiscal regime for maximum returns from the extractive industry.

### 5.6.2 Kenya

Before 1981, Exploration in Kenya was carried out under a Royalty system under the Mining Act .However, Kenya changed to PSC system after the enactment of the petroleum Exploration & Production Act in 1992. As is with the case of Uganda, the petroleum fiscal terms adopted by Kenya are mindful of the global competition for Foreign Direct Investment (FDI) in the petroleum sector and largely reflect incentives and conditions that are aimed at attracting FDI to the sector. Still, the petroleum fiscal terms adopted by Kenya are favourable for FDI to the large extent.

The Kenya Fiscal regime employs a sliding scale linked to daily production targets to determine production targets and the profit split between the National oil companies of Kenya where the later expects a fair share of return upon discovery of commercial quantities of hydro carbons. Compared to Uganda, Kenya is considered to be one of the countries with a robust, tough regime because of its high state take [312] Kenya's model PSA does not provide for payment of royalties .This is the preferred model for oil majors .However, it has been criticised by host countries because it makes it difficult for host governments to meet citizen demands.

From the above discourse ,the petroleum fiscal regime of Kenya resonate well with the international competition to attract and retain foreign investment in the sector .The only short coming with Kenya's fiscal regime is the ambiguous policy on farm down transactions . Despite the aforementioned ,Uganda's fiscal regime provides generous allowable deductions including initial allowances ,decommissioning costs ,loss carry forward ,tax exemptions and depreciation allowances .

### 5.7.2 Ghana.

Ghana became an oil producing country in 2010.International companies which have invested in the oil and Gas sector include, Tullow Kosomos energy Norsk and Hydro Oil

[312] Barrows, GH, World Fiscal systems for Oil Van Meurs & associates limited, Calgary Alberta 1997.

company ltd. Unlike Uganda, Ghana opted for a hybrid system of production sharing and concessionary regime to govern contractual arrangements in the upstream petroleum industry[313] .The Ghana fiscal regime comprises of Royalty, rent and income tax. Royalty is on gross production in each block depending on water depth, ranging from 5%-12% oil extracted. This royalty enables the state to get early revenue thereby securing the states objective of getting fair share of its oil wealth as one of the objectives in designing a fiscal policy. on carried interest , the state is entitles to 10% interest in each block should be made without payment to the investors by the state .the state is carried during exploration and development stage[314], on income tax , the income tax law provides maximum of 50% although it be changed by contract.

The standardised clause in the fiscal regime of which is used to prevent legislative intervention in a negotiated contract protects the interest of the investors. What can be descended from the above disclose is that Ghana's fiscal regime is investors friendly and well adoptive to the international competition for foreign investment in the sector. However, Ghana to effectively be a competitive fiscal regime to attract and retain foreign investments and at the same time, get a fair share of the resource, there is need to align the state take in the fiscal regime with the investor take.

Ghana streamlined her fiscal regime by making amendments to the laws governing the industry following the discovery of hydrocarbons. Before the amendments, they were the loopholes in its fiscal regime and the country was worried about the prospects of international oil companies using loopholes in the fiscal regime siphon everything from the hydrocarbons thereby leaving the country in the resource curse [315] Unlike Uganda, Ghana has a law specifically dedicated to the Taxation of oil and gas activities[316]. It uses the hybrid approach; therefore, characteristically-he petroleum fiscal regime cuts across both the Concessionary and the Production sharing Systems. Petroleum taxation in Ghana is based on taxes and royalties[317].

Ghana provides incentives to the upstream sector through unlimited loss carry-forward and

[313] The Ghana Policy Journal 2010 P.16
[314] Ghana policy journal 2010 page 16.
[315] Francis Kweku Samanhyia , fiscal Regime of Ghana's oil and gas industry , a pre commercial production Review. European journal of Business, Economics and Accountancy vol.iv, No.9, 2016 page 65.
[316] Petroleum Income Tax Law 1987 (P.N.D.C.L 188) –Ghana ("PITL")
[317] Joe Amoako-Tuff our and Joyce Owusu-Ayim, 'An Evolution of Ghana's Petroleum Fiscal Regime' (2010)4, Ghana Policy Journal, IEA Ghana

capital allowances; In addition, it does not levy withholding taxes on interest and dividend payments by contractors[318]; it has a limited ring fence and gives exemptions[319] to contractors on capital gains taxes[320]. It also has no cost recovery limits in the petroleum industry[321]. To avoid regulations and thin capitalization ratio 3:1.

From the angle of the oil companies, the above instruments make Ghana competitive but not from the angle of the HG. Currently all is not rosy, in a 2015, March report by the Ghana Institute of Governance and Security (GIGS), its indicated that Ghana has so far received US $ 2.7 billion in total revenue from the oil sector in a four year production period (since 2010). Yet if it had adopted the production sharing system, it would have earned US $ 6.4 billion in the same period. As such, it is at loss because it opted for a system not so appropriate to its circumstances.

This section has given a brief outlook of petroleum taxation in Uganda, the case study and Ghana the reference point for good practice. Accordingly, the section reveals that Uganda uses production-sharing agreements, which are a subset of the contractual systems to determine its petroleum fiscal regime. While Ghana uses a hybrid system that combines characteristics of both the concessionary and contractual systems thus the tax/royalty system.

Of importance is the fact that unlike Uganda, Ghana has a specific law for petroleum taxation; a fact that brings certainty to the latter's petroleum fiscal regime. Unlike its counterpart, Ghana does not charge signature bonuses, capital gains tax, has no cost recovery limits, charges lower royalty rates and does not share production.

As noted from the beginning of this section, Fiscal regimes apply according to culture, history, social and political situations of countries or jurisdictions in which they are imposed. No country's conditions are the same and attempts to replicate the fiscal patterns of one state in

[318] S.27 Petroleum Income Tax 1988, PNDCL 188
[319] Keith W. Blinn. Claude Duval, Honore Le Leuch , Jacqueline Lang Weaver and Andre Pertuzio International Petroleum and Exploitation Agreements , Legal Economic and policy Aspects 2nd edition . 2009 Barrows Company Inc. 1986
[320] However, in 2014 via the Budget speech Government proposed to apply the provisions of the Internal Revenue Act 2000 (Act 592) relating to Capital Gains Tax (CGT) to petroleum operations and thus introduce CGT to the petroleum sector. See section 118 of the National Budget Speech of Ghana (2014): PWC, 2014 Budget Highlights-Commentary http://www.pwc.com/en_GH/gh/assets/pdf/2014_budget_highlights_final.pdf 23, accessed on June 2, 2019. However, to date the said proposal has never become law.
[321] Dankwa Kankwa and Shmael Ackah, (n.19) 410 'see also, Hackman, Nana Adjoa. Was Ghana right in choosing rayality tax system for the oil sector? (2009) 21(1) Danquah Institute quarterly, 18 http://danquahinstitute.org/docs/oilsectorundersecurity.pdf accessed September 2 2019

another will invariably fail. The time the contracts were negotiated and the nature of the reserves, whether offshore or onshore is a major consideration in a fiscal regime .However, a study of other regimes can provide lessons, good practices and standards.

# CHAPTER SIX

# CONCLUSION, RECOMMENDATIONS, LIMITATIONS AND AREAS FOR FUTURE RESEARCH

## 6.1 Summary

This study was about petroleum taxation in Uganda: specifically, the focus was on the extent of the attractiveness of petroleum taxation in the upstream segment. In analysing this issue, the study evaluated the structure of petroleum taxation in Uganda and how the government balances the objectives under the national oil policy of 2008 with the interests of investors without distracting FDls.

In evaluating the competitiveness, the study made recourse to literature on the attributes of a good tax system. Adam smith provided the first earliest four attributes a good taxation system; many more theorists and economists followed in these footsteps, proposing other attributes in addition. From these attributes, this study adopted four measures or principles, notably; neutrality, certainty and transparency, risk sharing and government. The interaction of these measures with the concept of economic rent formed the theoretical framework for this study.

In evaluating the structure of Uganda's petroleum fiscal regime, this study noted that - it is based on the production sharing system, which is made up of both tax and nontax fiscal instruments like, royalty, income tax, signature bonuses, surface rentals, state participation, domestic market obligations and production sharing amongst others. The study also noted that the type of fiscal regime that a country like Uganda chooses depends on its risk profile, that is to say, the level of development of its infrastructure, the political risk, commercial risk and geological risk.

To measure the competitiveness of the petroleum fiscal regime the four criteria developed from literature where adopted and incorporated into a questionnaire that was administered to 23 key informants. A telephone interview involving 17 of the 23 key informants was also conducted. Following the data collected, it was concluded that Uganda uses fiscal instruments to balance its objectives and investors' interests. The fiscal regime uses its tax and non-tax instruments to attain revenue and benefit for the government and incentives like VAT exemptions and production sharing to reward investors. However, the study found that due to the presence of

pre-production taxes and other non-profit based taxes, the fiscal regime lacks neutrality, is uncertain, falls low in risk sharing, lacks transparency and collects a very big government take irrespective of its high political risk.

On the face of it, when evaluated alongside Ghana, one easily concludes that, based on neutrality, certainty and transparency, risk sharing, and government take Uganda's petroleum fiscal regime is less competitive. However, since there is 'no one size fits all' in petroleum taxation; and given the fact that each petroleum frontier has peculiar characteristics, each nation's petroleum fiscal regime should be judged on the needs and circumstances of the particular host government.

### 6.2 Limitations of the Study

While carrying out this study, the researcher encounters the following challenges;

### 6.3 Time Constraints

Since the researcher is in full time employment, there was delays in the distribution and collection of questionnaires because of work related constraints. Giving equal attention to both activities poses a challenge. However, this was overcome by hiring of 3 research assistants with a research competence background. These where given some basic training on how to go about the research

### 6.4 Cost of the Research:

The research involved a lot of travelling and telephone calls to coordinate the distribution of questionnaires and telephone interviews, which necessitated financial cover. The researcher had to dig deeper into his pockets to facilitate the completion of the research.

The subject of this study is highly technical and covers new areas hitherto irrelevant. As such, there is lack of locally available data yet internet access is poor and expensive. Some documents could not be accessed, like PSAs, luckily, some had been made public by IOCs in their home countries and as such could be accessed on internet although not all. This was however resolved by referring to the Model production sharing agreement for Uganda of 2009 around which all current PSAs are modified.

### 6.5 Companies' policies:

Due to some companies' policies, it was difficult to get some data from some respondents, this explains why out of the 28 questionnaires administered only 23 where returned. It turned out that despite the assurances of non-disclosure and assigning academic research as a reason some respondents called back with apology, as they could not fill the questionnaires due to what they called 'reasons beyond my pay grade.

However, since the response rate was above 82% (see section 5.2.1) more than average the study proceeded with the returned questionnaires and accordingly interpreted and applied the respective findings.

### 6.6. Recommendations

In order to gain and maintain competitiveness in the petroleum industry. It is crucial that the fiscal regime is adjusted to strike an adequate balance between the interests of the GoU and IOCs. Otherwise, capital will flow into nations with more attractive fiscal regimes.

#### 6.6.1 Neutrality

Although it is not possible to have a purely neutral regime, the degree of neutrality can be increased. This can be done by reducing or re-adjusting pre-production or front- ended taxes. For example, according to the MPSA 2009, signatures bonuses for allocation of a prospecting acreage are negotiable. Negotiable tax regimes are not predictable, they do not take into consideration prevailing economic conditions and are subject to corruption as well. As such they affect competitiveness of the industry from both the investors and governments view, since the rates payable are never certain the investors cannot plan while on the other hand, government losses revenue. This can be solved by introducing the use of sliding scales, which take into consideration the prevailing market conditions, and the geological characteristics of oil field. This means bonuses will differ from one oil field to another following a systematic scale. The same should be applied to other similar levies

Furthermore, the front ended taxes should be eliminated. The lost source of revenue can be replaced by increasing the corporate income tax rate to either 35% or 40%. Since corporate income tax is profit based, eliminating the front ended takes and increasing the CIT rates brings progressivity to the fiscal regime.

### 6.6.2 Certainty and transparency

Improving certainty and transparency also increase the fiscal regime's neutrality because taxes become clear and pre-determinable before investment decisions are made. In Uganda, certainty can be improved by introducing a distinct petroleum tax law and harmonizing the regime relating to the taxation of petroleum. Article 11 of MPSA 2009 should also be adjusted in a manner similar to Article 12 of Ghana's MPA of 2000 - whereby the laws relating to taxation of petroleum activities are clearly listed and gazette. This will eliminate problems like those that arose in the ***Tallow Pic& another v. URA*** **case**[322] where court had to declare that in case of a conflict between the PSA and provisions of the income tax act, the latter is superior.

More to that, with a special taxation law in place, since oil companies make more money than ordinary companies, the government can set unique CIT rates for oil companies without distorting the tax regime in other sectors of the economy.

In addition, certainty and transparency can be enhanced by making the PSAs public. This will facilitate civil society organizations to freely scrutinize them and thus make meaningful recommendations to the debate on oil revenues. Other than that, it will improve on the education and management of public expectations concerning the extraction of the oil and gas resource.

### 6.6.3 Risk Sharing

The MPSA 2009 offers capital cost and depreciation allowances. If looked at distinctively, they delay taxation, but when considered alongside royalty payments and bonuses, the risk sharing advantage they bring to the investor is greatly compromised. However, risk sharing in this respect can be hastened by introducing the use of uplifts of about 10% on capital expenditure. Uplifts allow oil companies to recover an additional percentage of capital costs through cost recovery and make the fiscal regime more attractive.

In an attempt to control transfer pricing and gold platting, Uganda operates a narrow ring fence[323]: this constrains any opportunity to offset costs, thereby tilting the risk sharing balance. Nonetheless, this can be resolved by introducing the cross-field allowance: this allows costs

[322] *Tallow Pic& another v. URA, TAT application No.4 of 2011*

[323] A ring face refers to the isolation of projects/ or Oil fields under a particular licensee into a single entity for the purpose of tax computation. It prevents oil companies from mixing costs from one project with revenues from another, see Crowson

incurred in the development of new projects to be offset against existing projects. It also shifts an additional portion of the risks to the government. The government can balance this burden by increasing the rate of the corporate income tax rate on profit by oil companies. This increment is a tax on profit and therefore progressive.

Another way the government shares its risk is by state participation. Uganda operates a 15% carried interest participation at the exploration stage of production. Upon confirmation of production, it is repaid back with interest through oil share. However, Uganda can change this by incorporating a national oil company and participate exploration through a joint venture where it invites the public to contribute to the joint venture company through a public offering on the Uganda stock exchange. This way it will raise enough funds to contribute cash to its 15% interest through equity contribution, thereby reducing the risk that the oil companies incur in carrying the state. It will also save the country money it would have otherwise paid in interest when production resumes.

However, for government to avoid losses arising out of hitting dry wells, it will have to invest in increasing the quality of geological data and as such only invest cash where the prospects are high, which also reduces the investors' risks.

### 6.6.4 Government Take.

The introduction of the use of sliding scales to determine signature bonuses and other levies, introduction of cross-field allowances, the recommended adoption of equity participation as opposed to carried interest state participation and improvement of the quality of geological data are all ways of reducing government take.

Additionally, government can investment more in the development of petroleum infrastructure and fast track the East African community common markets and economic union, this will open up Uganda to the Kenyan thereby reducing setbacks related to international market accessibility due to being land lacked. When the risk profile is reduced, lOCs will not have to worry about the government risk because they will be incurring less costs and earning more thus making Uganda's petroleum industry more competitive.

### 6.6.5 Areas for Future Research

During the course of the study, the researcher encountered several gaps closely related to the subject under study that require future research. There is need for future studies to explore the

relationship between the concept of uncertainty and the 2011 Capital gains disputes involving URA, Tullow Oil, Total E&P and Heritage Pic. There is also need for a study on the adequacy of Uganda's petroleum fiscal regime to address the risk profile in the petroleum industry. There is need for a study on relationship between petroleum taxation and the decommissioning regime in Uganda.

All these issues come up in the course of the study; however, the researcher side lined them because they were outside the scope of this research paper.

**Conclusion.**

Uganda's petroleum fiscal regime doesn't cover all the oil macroeconomics management aspects of the petroleum fund and the oil investments fund established for efficient and effective application of the oil revenues for the socio economic development of Uganda. the researcher analyses the main fiscal regime instruments eg taxes , royalties , dividends and policies which are being implemented and developed in Uganda's in order to manage oil revenues collection from oil exploration , production and export and therefore Uganda's fiscal regime will generate maximum revenues to the government while encouraging oil investments after assessing the strengths and weaknesses of Uganda's oil fiscal regime in terms of sustainability , effectiveness and expected returns.

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# APPENDICES

## APPENDICE A

**COPY OF THE QUESTIONAIRE**

UGANDA CHRISTIAN UNIVERSITY
INSTITUTE OF PETROLEUM STUDIES,
KAMPALA, P.OBOX, KAMPALA.

Dear Respondent.

My name is Wasswa Adams carrying out a study on the efficacy of Uganda's fiscal regime in attracting and retaining investors in Uganda's oil and gas industry. An examination of the legal and contractual framework .i intend to examine the effectiveness of the fiscal regime in attracting investors in Uganda's Oil and Gas sector.

I kindly request to answer the following questions as much honest as you can.

All the information shall be treated with great confidentiality and it will only be used to serve its intended purpose.

I will be grateful for your positive response.

……..
**Wasswa Adams.**
**0702899001**
**Researcher**

APPENDIX B.

SAMPLE SIZE DETERMINATION

Table giving recommended sample size (s) for given populations (N)

| N | S | N | S | N | s | N | s | N | s |
|---|---|---|---|---|---|---|---|---|---|
| 10 | 10 | 100 | 80 | 280 | 162 | 800 | 260 | 2800 | 338 |
| 15 | 14 | 110 | 86 | 290 | 165 | 850 | 265 | 3000 | 341 |
| 20 | 19 | 120 | 92 | 300 | 169 | 900 | 269 | 3500 | 346 |
| 25 | 24 | 130 | 97 | 320 | 175 | 950 | 274 | 4000 | 351 |
| 30 | 28 | 140 | 103 | 340 | 181 | 1000 | 278 | 4500 | 354 |
| 35 | 32 | 150 | 108 | 360 | 186 | 1100 | 285 | 5000 | 357 |
| 40 | 36 | 160 | 113 | 380 | 191 | 1200 | 291 | 6000 | 361 |
| 45 | 40 | 170 | 118 | 400 | 196 | 1300 | 297 | 7000 | 364 |
| 50 | 44 | 180 | 123 | 420 | 201 | 1400 | 302 | 8000 | 367 |
| 55 | 48 | 190 | 127 | 440 | 205 | 1500 | 306 | 9000 | 368 |
| 60 | 52 | 200 | 132 | 460 | 210 | 1600 | 310 | 1000 | 370 |
| 65 | 56 | 210 | 136 | 480 | 214 | 1700 | 313 | 15000 | 375 |
| 70 | 59 | 230 | 140 | 500 | 217 | 1800 | 317 | 20000 | 377 |
| 75 | 63 | 240 | 14 | 550 | 226 | 1900 | 320 | 30000 | 379 |
| 80 | 66 | 250 | 148 | 600 | 234 | 2000 | 322 | 40000 | 380 |
| 85 | 70 | 260 | 152 | 650 | 242 | 2200 | 327 | 50000 | 381 |
| 90 | 73 | 270 | 155 | 700 | 248 | 2400 | 331 | 75000 | 382 |
| 95 | 76 |  | 159 | 750 | 254 | 2600 | 335 | 100000 | 384 |

**Source: Krejcie, R.Vand Morgan, D.W. (1970)**

“S" is sample size

Using the above methods as a guideline, the following section aims to compare two approaches in determining the sample size of a population using a) Krejcie and Morgan (1970) and b) Cohen Statistical Power Analysis.

Estimation of sample size in this research using Krejcie and Morgan was employed. Krejcie and Morgan (1970) used the following formula to determine the sampling size. S = X2NP (1 -P) / d2 (N- 1) + X2P (1 - P)

S = required sample size

X2 = the table value of chi-square for one degree of freedom at the desired confidence level.

N = the population size

P = the population proportion (assumed to be .50 since this would provide the maximum sample size)

d = the degree of accuracy expressed as a proportion (.05)

**(Research Questionnaire)**

**Section A**

**(Demographic Characteristics of Respondents)**

1) Place of Work:

| | | |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

**Please tick as appropriate;**

2) Occupation:

| | | |
|---|---|---|
| | **1) Consultant** | |
| | **2) Auditor** | |
| | **3) Tax Official** | |
| | **4) Policy Maker** | |
| | **5) Lecturer** | |
| | **6) Lawyer** | |
| **7) Opinion leader** | | |

**If your occupation is not listed, please specify here:**

3) Working Experience (in years):

| | | | | | |
|---|---|---|---|---|---|
| | | | | | |

4) Your Portfolio in the organization

| | | | |
|---|---|---|---|
| **gerial** | **managerial** | **tive** | **endent consultant** |

(Legal Framework on Petroleum Taxation in the upstream)

**Please answer each statement by ticking the appropriate box:**

**Please indicate the extent of your agreement with each of the following statements on the taxation of oil and gas activities in the upstream sector.**

1= Strongly Agree, 2=Agree, 3==Neutral, 4=Disagree, S=Strongly Disagree

| S/N | Particulars | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|---|
| 1 | **Uganda does not have a specialized law on petroleum taxation** | | | | | |
| 2 | **The current petroleum taxation laws should be combined into** | | | | | |
| 3 | **The current petroleum fiscal regime is complicated/not easy to understand** | | | | | |
| 5 | **The uncertainty in the petroleum fiscal regime is responsible for the CGT disputes in the sector between URA & several** | | | | | |
| 7 | **There a fair sharing of risk between the Government and IOCs under the current petroleum fiscal regime** | | | | | |
| 8 | **The current petroleum fiscal regime favours the interests of IOCs over government objectives** | | | | | |
| 9 | **The current taxation system is progressive** | | | | | |
| 10 | **The government take is too big compared to the share IOCs** | | | | | |
| Production Sharing Agreements | | | | | | |
| 11 | **the PSA system is the best Uganda could adopt** | | | | | |
| 12 | **Levying of pre-production taxes is regressive** | | | | | |
| 13 | **Considering the country's risk profile, the royalty rates charged under the MPSA 2009 are high** | | | | | |
| 14 | **The production share under the MPSA 2009 is fair** | | | | | |
| 15 | **The lack of transparency as regards PSAs is increasing uncertainty in the sector** | | | | | |
| 16 | **The PSAs should be made public** | | | | | |

Section c.

Factors influencing the effectiveness of Petroleum Fiscal Regime.

**1. Please indicate the strength of your agreement that each of the following incentives helps to increase investments and international competitiveness of Uganda's taxation system in the petroleum upstream sector**

1= Strongly Agree, 2=Agree, 3=Neutral, 4=Disagree, 5=Strongly Disagree

| S/N | Particulars | 1 | 2 | 3 | **4** | 5 |
|---|---|---|---|---|---|---|
| **1** | **Tax incentive packages to investors like VAT exemptions on equipment used in the petroleum upstream sector: & Initial** | | | | | |
| **2** | **Accelerated depreciation & Loss Carry forward** | | | | | |
| **3** | **Negotiable signature bonuses** | | | | | |
| **4** | **Allocation of part of the oil production to IOCs to recover costs incurred in exploration activities** | | | | | |

**2. Please indicate the strength of your agreement that each of the following attributes largely enhance the effectiveness and efficacy of petroleum fiscal regime.**

**1= Strongly Agree, 2=Agree, 3=Neutral, 4=Disagree, 5=Strongly Disagree**

| S/N | Particulars | **1** | **2** | 3 | 4 | **5** |
|---|---|---|---|---|---|---|
| **1** | **Neutrality** | | | | | |
| **2** | **Risk Sharing** | | | | | |
| **3** | **Certainty & Transparency** | | | | | |
| **4** | **Government Take** | | | | | |

**Of a good tax system.**

1= Strongly Agree, 2=Agree, 3 = Neutral, 4=Disagree, S=Strongly Disagree

| **S/N** | **Particulars** | **1** | **2** | **3** | **4** | **5** |
|---|---|---|---|---|---|---|
| **1** | **Neutrality** | | | | | |
| **2** | **Risk Sharing** | | | | | |
| **3** | **Certainty & Transparency** | | | | | |
| **4** | **Government Take** | | | | | |

**Section D**

1. Please indicate the strength of your agreement: That the current petroleum fiscal regime to

what is the impact of the fiscal regime on the host state and the international oil companies..

1= Strongly Agree, 2=Agree, 3=Neutral, 4=Disagree, S=Strongly Disagree

| S/N | Particulars | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|---|
| **1** | **Signature Bonuses** | | | | | |
| **2** | **Surface Rentals** | | | | | |
| **3** | **Royalty** | | | | | |
| **4** | **Production Sharing** | | | | | |
| **5** | **State participation** | | | | | |
| **6** | **Corporate income Tax** | | | | | |
| **7** | **Withholding Tax** | | | | | |
| **8** | **Capital gains tax** | | | | | |
| **9** | **Stamp Tax** | | | | | |
| **10** | **Excise, import and export levies** | | | | | |

**Risks in the petroleum sector**

1. Please indicate whether the strength of your agreement to the following statements in respect of risk and government take in Uganda's petroleum industry 1=
2. **Strongly Agree, 2=Agree, 3=Neutral, 4=Disagree, S=Strongly Disagree**

| **S/N** | **Particulars** | **1** | **2** | **3** | **4** | **5** |
|---|---|---|---|---|---|---|
| **1** | **Government take is above 80%** | | | | | |
| **2** | **The sector is averse with political, commercial, geological, and infrastructural risks** | | | | | |
| **3** | **The government take is very high compared to the risk profile of the country** | | | | | |

If you wish to make any additional comments on the attractiveness of Uganda's petroleum fiscal regime, please write them in the space below

**END OF QUESTIONNAIRE**