CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

Republic of the Union of Myanmar
Revenue Appellate Tribunal
Income Tax Appeal No. 4/2022

Applicant	Vs.	Respondent
Petronas Carigali Myanmar Inc (Branch Office) No. 3/A, Units 17-01 to 17-10 17th Floor, Junction City Tower Corner of Bogyoke Aung San Road and 27th Street Pabedan Township, Yangon Region.		Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the applicant	-	U Than Oo, Advocate U Nyein Myint, Advocate
Appearing for the respondent	-	U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order	-	21 March 2023

Judgment

In this case, Petronas Carigali Myanmar Inc (Branch Office) "PCMI" applied to the Director General of the Internal Revenue Department to review the decision in the Notification of Audit Result (SAS-3), issued by the Large Taxpayer Office with letter No. IRD/LTO/Audit/2021(723) dated 22-1-2021 for the 2019-2020 assessment year (2018-2019 income year), which ordered the payment of additional income tax in the amount of MMK 3,749,805,189 without allowing the deduction when calculating income tax of petroleum exploration costs in the amount of USD 27,884,407 (MMK 25,534,203,242), and then filed this income tax appeal with the Revenue Appellate Tribunal against the decision of the Director General dated 22-3-2022 that confirmed the decision in the Notification of Audit Result (SAS-3) issued by the Large Taxpayer Office.

The Revenue Appellate Tribunal heard the submissions of the applicant and the respondent and considered and studied in detail the documents and information related to the case. As the applicant is an investment business that signed production sharing contracts (PSC) with Myanma Oil and Gas Enterprise with the approval of the Myanmar Investment Commission and carries on oil exploration and drilling activities in designated blocks, it may, if the Myanmar Investment Commission's permit and the

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

PSC contain any benefits related to income tax assessment, enjoy these benefits according to section 5 (d) Income Tax Law, and if no benefits are mentioned in the permit and PSC, they must be calculated and assessed in accordance with the provisions of the existing Income Tax Law.

As the applicant Petronas Carigali Myanmar Inc (Branch Office) classified as operating expenses (revenue expenditure) petroleum exploration costs (exploration costs) from its abandoned blocks IOR-5, IOR-7 and EP - 1 and applied to be allowed to deduct them from the total income generated from the blocks M-12, M-13 and M-14 from the income-generating Yetagun project, it first has to be verified whether the applicant company's petroleum exploration costs may be treated as operating expenses and, when calculating the annual assessable income, deducted from the petroleum profit.

The applicant's attorney argued that operating costs and capital expenditure are not defined in the Income Tax Law. Section 3 (a) Interpretation of Expressions Law provides that "expressions in a legal provision shall be understood in their ordinary, everyday meaning," and capital expenditure may be easily understood to mean in its ordinary, everyday meaning costs for capital assets incurred for the development of the business the ordinary, and operating costs to mean costs incurred to continue to operate an existing business.

Petroleum exploration costs are costs invested with the expectation of obtaining a long-term benefit (enduring benefit) from having access to oil and natural gas which are, although they do not only arise once but are recurring, capital expenditure for the business which may be accumulated according to general guidelines used internationally. They are costs for investing in data and information to determine whether there is the possibility of commercially producing oil and natural gas from the area specified in the PSC, and these costs are considered to be capital expenditure only.

The application for administrative review to the Director General of the Internal Revenue Department only referred to "exploration expenses" without distinguishing between "non-drilling costs" and "drilling costs", but in this appeal, in the exploration expenses incurred for IOR-7, non-drilling costs incurred in relation to seismic acquisition, G&G and data processing as well as drilling costs are included, and it was submitted that according to the accounting method, IOR-7's non-drilling costs were booked as expenses in the Profit & Loss in the year in which they were incurred, and the drilling costs were booked as expenses in the Profit & Loss for the 2018-2019 fiscal year once internal notification was received in March 2019 that they did not result in the discovery of oil and natural gas that may be commercially produced. The non-drilling costs and the drilling costs are not costs to generate income from the abandoned blocks, but costs for capital assets incurred for the development of a business and must therefore be considered to be a capital expenditure.

Although it has been found that expenses and costs related to petroleum operations are deductible expenses when calculating the profit according to PSCs and when calculating income tax, the right to

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

claim expenses is considered to have been lost because no petroleum profit and no income from oil and natural gas was generated due to the applicant's blocks IOR-5, IOR-7 and EP-1 having been abandoned for lack of discovery of oil and natural gas that may be commercially produced.

It has been found that an agreement was made in 9.4 and 9.5 of the PSC for IOR-5 and EP-1 and in 8.3 and 8.4 of the PSC for IOR-7 that all expenses and costs related to the petroleum operation are recoverable in accordance with Appendix (C) up to the specified percentage from all the petroleum available from the area specified in the contract, that if the recoverable expenses or costs exceed the value of all cost petroleum in a specified area, the remaining costs may be carried forward to the next accounting period, and that there is no right to recovery after contract termination. Therefore, expenses and costs related to the petroleum operation are considered to be recoverable expenses. Therefore, we may consider that the exploration expenses requested to be taken into account when calculating the annual taxable income are only the costs that may be deducted from the oil and natural gas available under the PSCs, and that the right to recovery under the contract was lost because the block was abandoned.

Furthermore, in relation to the request for deduction of exploration expenses incurred for the IOR-5, IOR-7 and EP-1 Blocks from the total income received from the M-12, M-13 and M-14 Blocks of the Yetagun project, it has been found that an agreement was made in 9.4 and 9.5 of the PSC for IOR-5 and EP-1 and in 8.3 and 8.4 of the PSC for IOR-7 that expenses and costs related to the petroleum operation are recoverable up to the specified percentage from all the petroleum available from the area specified in the contract, that if the recoverable expenses and costs exceed the value of all cost petroleum in a specified area, the remaining costs may be carried forward to the next accounting period, and that there is no right to recovery after contract termination.

The applicant's attorney submitted that it is nowhere stated whether the exploration expenses incurred in an area specified in a PSC may be offset against the income received from another PSC, but it is evident that only costs and expenses related to the area are recoverable from the oil and natural gas produced from the area specified in the contract, as it is stated that expenses and costs related to the petroleum operation are recoverable up to the specified percentage from all the petroleum available from the area specified in the PSC.

Section 20 (a) Income Tax Law states that if there is a loss from any source of income during the income year, it must be set off against the income from other sources of income earned during that year, but this provision may not be used for the set-off as "source of income" is only a reference to any source of income mentioned in section 8 (a) of this law, and all the applicant's operations in this case fall under "business" in section 8 (a) (3) of this law. Although it is stipulated in section 11 (b) Income Tax Law that expenses incurred for earning the income may be deducted when calculating the business income, it is

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

[also] stipulated that capital expenditure may not be deducted, and exploration expenses may not be deducted from the income tax *[sic]* as they are capital expenditure.

Therefore, based on the particulars agreed in the PSC and the provisions of the Income Tax Law related to the right to deduct expenses, we consider that the applicant's requests cannot be granted.

Based on the findings above, it cannot be said that the decision of the Director General of the Internal Revenue Department to confirm the SAS-3 (Notification of Audit) dated 22-2 *[sic]*-2021 issued by the Large Taxpayer Office was made in conflict with applicable law, procedures, and agreements in the PSC. According to section 15 Revenue Appellate Tribunal Law, the following order has therefore been made:

Order

The decision made by the Director General of the Internal Revenue Department dated 22-3-2022 in Administrative Review No. 14/2021 is confirmed and the appeal dismissed.

Kyaw Kyaw	Myint Oo	Yi Yi Myint
Member	Chairman	Member
	Head of the Bench	
	Revenue Appellate Tribunal	

[Published in the Myanmar Gazette dated 19 April 2024.]

Republic of the Union of Myanmar
Revenue Appellate Tribunal
Income Tax Appeal No. 5/2022

Applicant	Vs.	Respondent
PC Myanmar (Hong Kong) Limited (Yangon Branch) No. 3/A, Units 17-01 to 17-10 17th Floor, Junction City Tower Corner of Bogyoke Aung San Road and 27th Street Pabedan Township, Yangon Region.		Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the applicant	-	U Nyein Myint, Advocate U Than Oo, Advocate
Appearing for the respondent	-	U Tin Htwe, Director

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

(Departmental Representative)
Internal Revenue Department

Date of the order - 21 March 2023

Judgment

In this case, taxpayer PC Myanmar (Hong Kong) Limited (Yangon Branch) "PCML", having taxpayer identification number 166259592 and being subject to the self-assessment system at the Large Taxpayer Office of the Internal Revenue Department, was dissatisfied with the decision in the Notification of Audit Result (SAS-3), issued by the Large Taxpayer Office with letter No. IRD/LTO/ Audit/ 2021(724) dated 22-1-2021 for the 2017-2018 assessment year (2016-2017 income year), which ordered the payment of additional income tax in the amount of MMK 2,129,734,040 without allowing the deduction when calculating income tax of oil exploration costs in the amount of USD 31,749,042 (MMK 31,316,918,343) and own costs in the amount of USD 1,261,289 (MMK 1,244,122,024), and applied to the Director General of the Internal Revenue Department for administrative review, and then filed an appeal with the Revenue Appellate Tribunal as it was not satisfied with the Director General's decision to confirm the decision in the Notification of Audit Result (SAS-3) of the Large Taxpayer Office.

The Revenue Appellate Tribunal heard the submissions of the applicant and the respondent and considered and studied in detail the relevant documents and information. It has been found that the applicant is an investment business that signed a production sharing contract (PSC) with Myanma Oil and Gas Enterprise with the approval of the Myanmar Investment Commission and carries on oil exploration and drilling activities in designated blocks. Therefore, according to the provisions of section 5 (d) Income Tax Law, if the Myanmar Investment Commission's permit and the PSC contain benefits related to income tax, these may be enjoyed, and if no benefits are mentioned, they must be calculated and assessed in accordance with the provisions of the existing Income Tax Law.

The attorney for the applicant argued on the applicant's behalf that in relation to oil exploration costs, operating costs and capital expenditure are not defined in the Income Tax Law.

The applicant is not paying the oil exploration costs for immediate income generation but investing them out of a long-term interest in future income. It has been found that value generation according to shares, bonds and similar instruments is covered by section 3 (q) Income Tax Law.

In section 2 (b) *[Should be 2 (h)]* Union of Myanmar Foreign Investment Law (Law No. 10/88) it is stipulated that foreign capital is foreign currency, materials such as machinery, equipment, machinery components, spare parts, appliances and accessories that are actually needed for the business and unavailable in the country, and technical know-how, all invested in an economic enterprise by any foreigner under a permit.

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

Section 3 (a) Interpretation of Expressions Law provides that "expressions in a legal provision shall be understood in their ordinary, everyday meaning". As "capital expenditure" is not defined in section 11 (b) (1) Income Tax Law, the expression is therefore considered to have to be understood in its ordinary, everyday meaning.

Furthermore, pursuant to section 9.4 (b) of the PSC, all expenses and costs incurred when engaging in petroleum operations shall be recoverable from available petroleum produced in any development and production area and shall be recovered from the cost petroleum in the quarter in which commercial production first occurs.

Furthermore, it has been found that section 9.5 of the PSC states, "If the costs in 9.4 in this quarter exceed the value of all cost petroleum from the area specified in the contract, the remaining costs can be carried forward to the next quarter and can be carried forward until fully recovered. However, there is no right to recovery after the termination of this contract."

According to the documentary evidence, it has been found that the date of acceptance of blocks AD-9 and AD-11 is 14-10-2017. Therefore, it is considered that the petroleum exploration costs of AD-9 and AD-11 may be calculated only when oil and natural gas can be found and produced commercially, and when an annual taxable income is generated.

PSC Annexure C, 1.1.2 states that "capital expenditure means … the costs arising from the acquisition of tangible assets whose original value may be depreciated."

In PSC Annexure C-2 it is stated that "all petroleum costs incurred in the contract area, except capital expenditure, may be recovered in the fiscal year in which they were incurred or in the fiscal year of commercial operation, whichever is later." Section 11 (b) Income Tax Law stipulates that "when calculating the income, expenses incurred to earn the income and depreciation allowance as prescribed by the Regulations may be deducted," but capital expenditure "may not be deducted".

Section 20 Income Tax Law stipulates that "If there is a loss from any source of income during the income year, it shall be set off against the income from the remaining sources of income in that year. This section shall not apply to loss from capital assets."

In section 9.11 (b) PSC it is stated that "the annual taxable income of the petroleum business operation permit holder shall be an amount equal to the net income calculated by deducting, from the petroleum profit allocated to the petroleum business operation permit holder, the non-recoverable expenses necessary for the operation of the petroleum business if they are allowed to be deducted according to the Income Tax Law. It is mutually understood that when calculating the taxable income, the petroleum business operation permit holder may deduct all business-related and legal expenses for income generation that may be deducted according to the provisions of the Myanmar Income Tax Law."

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

The applicant submits that the expenses submitted by the applicant are cost recovery expenses listed in PSC Annexure C sections 2.1 and 2.2, and the petroleum costs are recoverable as described below:

(a) All petroleum costs incurred in the area specified in the contract, except for capital expenditure mentioned in sections (b) and (c), are recoverable in the fiscal year in which such expenses are incurred or in the fiscal year in which commercial production commences, whichever is later.

(b) Capital expenditure in relation to the development and production area is recoverable as depreciation expenses at the rate of 25% per year starting from the fiscal year in which such expenses are incurred or the fiscal year in which commercial production commences in that development and production area, whichever is later.

(c) Capital expenditure incurred outside the development and production area (including airfields, offices, warehouses, vehicles, workshops, power plants, tools, equipment, etc.) is recoverable as depreciation expenses at the rate of 25% per year starting from the fiscal year in which such expenses are incurred or the fiscal year in which commercial production begins in that development and production area, whichever is later.

It has been found that the costs incurred by the applicant in AD-9 and AD-11 were actually incurred costs, that the relevant PSC has been terminated, and that, if these expenses which are not allowed to be offset are to be deducted from the income of blocks M-12, M-13, M-14, this may not be done in a lump-sum deduction, but as depreciation according to the authorised period of 28 years specified in the relevant PSC. It has been found that the respondent's decision is different from the period of 8 years specified in section 2.3 of Side Letter (#MD.2123 (0340)) for M-12, M-13 and M-14.

Regarding the exploration expenses for blocks AD-9 and AD-11 that the applicant applied for, the exploration expenses are determined to be non-recoverable costs at the time of business termination according to PSC 9.4 and 9.5 as the blocks were abandoned already at the exploration stage which made it impossible to commercially produce petroleum.

The expenses that the applicant applied for as "own costs" are cost recovery costs as per PSC Annex C section 2.1 and 2.12. Non-recoverable expenses may be deducted from the annual taxable income.

The costs incurred as "own costs" for blocks AD-9 and AD-11, which were terminated as there was no discovery of oil and natural gas that could commercially be produced, are capital expenditure incurred during the construction or preparation of the investment business prior to commercial production, which may be depreciated according to the license period of 28 years based on the age of the blocks. Therefore, it is considered that there is no reason to interfere with the review order made by the Director General of the Internal Revenue Department.

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

Based on the findings above, the decision of the Director General to confirm the SAS-3 (Notification of Audit) dated 22-1-2021 issued by the Large Taxpayer Office must be considered to be in accordance with the existing law, procedures, and agreements in the PSC. According to section 15 Revenue Appellate Tribunal Law, the following order has been made:

Order

The decision made by the Director General of the Internal Revenue Department dated 13-5-2022 in Administrative Review No. 18/2021 is confirmed and the appeal dismissed.

Zeya Kyin Yun	Myint Oo	Win Naing
Member	Chairman	Member

Revenue Appellate Tribunal

[Published in the Myanmar Gazette dated 19 April 2024.]

Republic of the Union of Myanmar
Revenue Appellate Tribunal
Income Tax Appeal No. 6/2022

Applicant	Vs.	Respondent
PC Myanmar (Hong Kong) Limited (Yangon Branch) No. 3/A, Units 17-01 to 17-10 17th Floor, Junction City Tower Corner of Bogyoke Aung San Road and 27th Street Pabedan Township, Yangon Region.		Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the applicant	-	U Nyein Myint, Advocate U Than Oo, Advocate
Appearing for the respondent	-	U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order	-	21 March 2023

Judgment

In this case, taxpayer PC Myanmar (Hong Kong) Limited (Yangon Branch) "PCML", having taxpayer identification number 166259592 and being subject to the self-assessment system at the Large Taxpayer

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

Office of the Internal Revenue Department, was dissatisfied with the decision in the Notification of Audit Result (SAS-3), issued by the Large Taxpayer Office with letter No. IRD/LTO/ Audit/ 2021(724) dated 22-1-2021 for the 2018-2019 assessment year (2017-2018 income year), which ordered the payment of additional income tax in the amount of MMK 2,170,896,211 without allowing the deduction when calculating income tax of oil exploration costs in the amount of USD 1,239,663 (MMK 1,222,790,437) and own costs in the amount of USD 1,334,535 (MMK 1,316,370,649), and applied to the Director General of the Internal Revenue Department for administrative review, and then filed an appeal with the Revenue Appellate Tribunal as it was not satisfied with the Director General's decision to confirm the decision in the Notification of Audit Result (SAS-3) of the Large Taxpayer Office.

The Revenue Appellate Tribunal heard the submissions of the applicant and the respondent and considered and studied in detail the relevant documents and information. It has been found that the applicant is an investment business that signed a production sharing contract (PSC) with Myanma Oil and Gas Enterprise with the approval of the Myanmar Investment Commission and carries on oil exploration and drilling activities in designated blocks. Therefore, according to the provisions of section 5 (d) Income Tax Law, if the Myanmar Investment Commission's permit and the PSC contain benefits related to income tax, these may be enjoyed, and if no benefits are mentioned, they must be calculated and assessed in accordance with the provisions of the existing Income Tax Law.

The attorney for the applicant argued on the applicant's behalf that in relation to oil exploration costs, operating costs and capital expenditure are not defined in the Income Tax Law.

The applicant is not paying the oil exploration costs for immediate income generation but investing them out of a long-term interest in future income. It has been found that value generation according to shares, bonds and similar instruments is covered by section 3 (q) Income Tax Law.

In section 2 (b) *[Should be 2 (h)]* Union of Myanmar Foreign Investment Law (Law No. 10/88) it is stipulated that foreign capital is foreign currency, materials such as machinery, equipment, machinery components, spare parts, appliances and accessories that are actually needed for the business and unavailable in the country, and technical know-how, all invested in an economic enterprise by any foreigner under a permit.

Section 3 (a) Interpretation of Expressions Law provides that "expressions in a legal provision shall be understood in their ordinary, everyday meaning". As "capital expenditure" is not defined in section 11 (b) (1) Income Tax Law, the expression is therefore considered to have to be understood in its ordinary, everyday meaning.

Furthermore, pursuant to section 9.4 (b) of the PSC, all expenses and costs incurred when engaging in petroleum operations shall be recoverable from available petroleum produced in any development and

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

production area and shall be recovered from the cost petroleum in the quarter in which commercial production first occurs.

Furthermore, it has been found that section 9.5 of the PSC states, "If the costs in 9.4 in this quarter exceed the value of all cost petroleum from the area specified in the contract, the remaining costs can be carried forward to the next quarter and can be carried forward until fully recovered. However, there is no right to recovery after the termination of this contract."

According to the documentary evidence, it has been found that the date of acceptance of blocks AD-9 and AD-11 is 14-10-2017. Therefore, it is considered that the petroleum exploration costs of AD-9 and AD-11 may be calculated only when oil and natural gas can be found and produced commercially, and when an annual taxable income is generated.

PSC Annexure C, 1.1.2 states that "capital expenditure means … the costs arising from the acquisition of tangible assets whose original value may be depreciated."

In PSC Annexure C-2 it is stated that "all petroleum costs incurred in the contract area, except capital expenditure, may be recovered in the fiscal year in which they were incurred or in the fiscal year of commercial operation, whichever is later." Section 11 (b) Income Tax Law stipulates that "when calculating the income, expenses incurred to earn the income and depreciation allowance as prescribed by the Regulations may be deducted," but capital expenditure "may not be deducted".

Section 20 Income Tax Law stipulates that "If there is a loss from any source of income during the income year, it shall be set off against the income from the remaining sources of income in that year. This section shall not apply to loss from capital assets."

In section 9.11 (b) PSC it is stated that "the annual taxable income of the petroleum business operation permit holder shall be an amount equal to the net income calculated by deducting, from the petroleum profit allocated to the petroleum business operation permit holder, the non-recoverable expenses necessary for the operation of the petroleum business if they are allowed to be deducted according to the Income Tax Law. It is mutually understood that when calculating the taxable income, the petroleum business operation permit holder may deduct all business-related and legal expenses for income generation that may be deducted according to the provisions of the Myanmar Income Tax Law."

The applicant submits that the expenses submitted by the applicant are cost recovery expenses listed in PSC Annexure C sections 2.1 and 2.2, and the petroleum costs are recoverable as described below:

(d) All petroleum costs incurred in the area specified in the contract, except for capital expenditure mentioned in sections (b) and (c), are recoverable in the fiscal year in which such expenses are incurred or in the fiscal year in which commercial production commences, whichever is later.

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

(e) Capital expenditure in relation to the development and production area is recoverable as depreciation expenses at the rate of 25% per year starting from the fiscal year in which such expenses are incurred or the fiscal year in which commercial production commences in that development and production area, whichever is later.

(f) Capital expenditure incurred outside the development and production area (including airfields, offices, warehouses, vehicles, workshops, power plants, tools, equipment, etc.) is recoverable as depreciation expenses at the rate of 25% per year starting from the fiscal year in which such expenses are incurred or the fiscal year in which commercial production begins in that development and production area, whichever is later.

It has been found that the costs incurred by the applicant in AD-9 and AD-11 were actually incurred costs, that the relevant PSC has been terminated, and that, if these expenses which are not allowed to be offset are to be deducted from the income of blocks M-12, M-13, M-14, this may not be done in a lump-sum deduction, but as depreciation according to the authorised period of 28 years specified in the relevant PSC. It has been found that the respondent's decision is different from the period of 8 years specified in section 2.3 of Side Letter (#MD.2123 (0340)) for M-12, M-13 and M-14.

Regarding the exploration expenses for blocks AD-9 and AD-11 that the applicant applied for, the exploration expenses are determined to be non-recoverable costs at the time of business termination according to PSC 9.4 and 9.5 as the blocks were abandoned already at the exploration stage which made it impossible to commercially produce petroleum.

The expenses that the applicant applied for as "own costs" are cost recovery costs as per PSC Annex C section 2.1 and 2.12. Non-recoverable expenses may be deducted from the annual taxable income.

The costs incurred as "own costs" for blocks AD-9 and AD-11, which were terminated as there was no discovery of oil and natural gas that could commercially be produced, are capital expenditure incurred during the construction or preparation of the investment business prior to commercial production, which may be depreciated according to the license period of 28 years based on the age of the blocks. Therefore, it is considered that there is no reason to interfere with the review order made by the Director General of the Internal Revenue Department.

Based on the findings above, the decision of the Director General to confirm the SAS-3 (Notification of Audit) dated 22-1-2021 issued by the Large Taxpayer Office must be considered to be in accordance with the existing law, procedures, and agreements in the PSC. According to section 15 Revenue Appellate Tribunal Law, the following order has been made:

Order

No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-790488268 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

The decision made by the Director General of the Internal Revenue Department dated 13-5-2022 in Administrative Review No. 18/2021 is confirmed and the appeal dismissed.

Zeya Kyin Yun	Myint Oo	Win Naing
Member	Chairman	Member

Revenue Appellate Tribunal

[Published in the Myanmar Gazette dated 12 April 2024.]

About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

- Sebastian Pawlita, Managing Director
  Phone: +95-9-262546284 (English)
  E-Mail: sebastian@lincolnmyanmar.com
- Nyein Chan Zaw, Director
  Phone: +95-9-790488268 (Myanmar)
  E-Mail: nyeinchanzaw@lincolnmyanmar.com

Office address: No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region

Web: www.lincolnmyanmar.com