

# **EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)**

***VALIDATION WORKSHOP ON THE 2010/2011 GHEITI  
RECONCILIATION REPORT-OIL/GAS SECTOR***

***COCONUT GROVE REGENCY HOTEL-ACCRA.***

***21<sup>ST</sup> February 2013.***

***PRESENTED BY K.BOA-AMPONSEM(BOAS &  
ASSOCIATES)***

# **HIGHLIGHTS : 2010/2011 EITI RECONCILIATION REPORT-OIL/GAS SECTOR.**

## **ORDER OF PRESENTATION.**

- 1.Objectives of EITI/Reports.**
- 2. Scope of Work/Approach and Methodology**
- 3.Highlights of 2010/2011 report**
- 4. Challenges**
- 5. Findings.**
- 9.Concluding Remarks.**

# OBJECTIVES OF EITI

- ❖ Improve Development Outcomes from payments made to Governments by the Extractive Industries
- ❖ Reduce Potential for Corruption and large scale Embezzlement of these payments.

## ACHIEVING THE EITI OBJECTIVES. THROUGH ENHANCED TRANSPARENCY IN RELATION TO:

- Payments
- Receipts
- Disbursements and
- Utilization of these benefits.

# **OBJECTIVES OF AGGREGATED/RECONCILED REPORTS.**

**The objectives of the report include the following:**

**Collect, analyze and aggregate payments made by Oil and Gas companies to Government of Ghana.**

**Reconcile Oil and Gas companies' submissions of payments to those received by Government.**

**Analyze the disbursements to the Ghana National Petroleum Company (GNPC), Annual Budget Funding Amount and the Ghana Petroleum Funds.**

**Utilize lessons learnt from the Reconciliation process to enhance Transparency in Payments, Receipts, Disbursements and Utilization of these benefits.**

# SCOPE OF WORK

**Revenue streams** considered under the report include:

- **Royalty,**
- **Profit Tax (Corporate tax),**
- **Surface Rental,**
- **Dividends,**
- **Initial (Carried) Interest.**
- **Additional Participating Interest**

# PARTICIPATING COMPANIES

*Participants in the 2010/2011 reconciliation process.*

| OIL & GAS COMPANIES                        | GOVERNMENT AGENCIES  |
|--|--|
| Tullow (Ghana) Limited                     | Ghana Revenue Authority(Domestic Tax and Customs Division) |
| Kosmos Energy Ghana HC                     | Ghana National Petroleum Corporation(GNPC)                 |
| Ghana National Petroleum Corporation(GNPC) | Ministry of Finance and Economic Planning/Bank of Ghana    |
| Saltpond Oil Fields Ltd                    | Petroleum Commission                                       |
| Anadarko (Ghana) Limited                   | Ministry of Energy   |
| Sabre Oil/Gas Ltd                          |  |
| E.O. Group Ltd                             |  |

# SCOPE OF WORK (CONT'D)

## Basis for Selected companies:

- Selected companies that were in active production of oil in 2010/2011 and their joint venture partners.

## Accounting basis:

- Cash Basis.

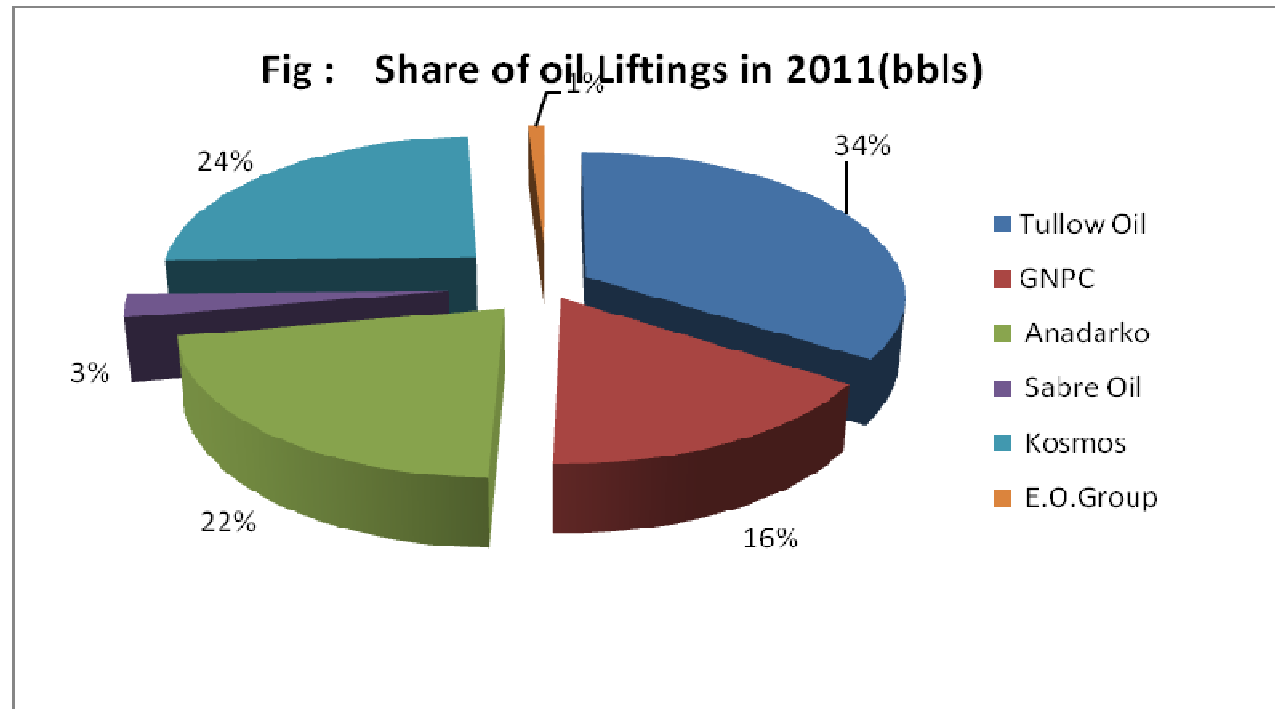


# FISCAL REGIME

*Fiscal regime of Jubilee Field/Saltpond Offshore Producing*

| <b>Fiscal item</b>      | <b>Jubilee Fields</b>   | <b>Saltpond Offshore Producing Company</b>                |
|-------------------------|---|---|
| <b>Royalty</b>          | 5% on the gross oil production. (Liftings); 3% on gross gas production.                           | 3%  |
| <b>Carried Interest</b> | 10% on the oil revenue net of royalty and operating expenses.                                     | 15%   |
| <b>Income Tax</b>       | 35%   | 30%   |
| <b>Surface Rent</b>     | US\$30 per square km at exploration<br>US\$100 per square km for development and production area. | US\$50 per square km for development and production area. |

# PRODUCTION/LIFTINGS



# RESULTS OF RECONCILIATION

*Reconciliation (by revenue stream) of GNPC Payments and Government Receipts in 2011*

| Revenue Stream                    | GNPC Payments       |                       | Government Receipts |                       | Variance |           |
|-----------------------------------|---------------------|-----------------------|---------------------|-----------------------|----------|-----------|
|                                   | BBL(A)              | U\$(B)                | BBL(C)              | US\$ (D)              | BBL(A-C) | US\$(B-D) |
| Royalty                           | 1,087,943.13        | 122,941,273.64        | 1,087,943.13        | 122,941,273.64        | -        | -         |
| Carried Interest                  | 2,067,087.91        | 233,587,963.67        | 2,067,087.91        | 233,587,963.67        | -        | -         |
| Additional Participating Interest | 775,157.96          | 87,595,486.37         | 775,157.96          | 87,595,486.37         | -        | -         |
| Total                             | <b>3,930,189.00</b> | <b>444,124,723.68</b> | <b>3,930,189.00</b> | <b>444,124,723.68</b> | -        | -         |

*Source: GNPC/MoFEP.*

# RESULTS OF RECONCILIATION

## *B 2010/2011 Company Payments/Government Receipts/Discrepancies*

| Revenue Stream    |             | Company(US\$)         | Government(US\$)      | Discrepancy(US\$) | Resolved | Unresolved      |
|-------------------|-------------|-----------------------|-----------------------|-------------------|----------|-----------------|
| <b>S/Rentals</b>  | <b>2010</b> | 113,525.45            | 107,496.50            | 6,028.95          | -        | 6,028.95        |
|                   | <b>2011</b> | 93,313.95             | 92,848.32             | 465.63            | -        | 465.63          |
| <b>Royalty</b>    | <b>2010</b> | 314,755.73            | 314,755.73            | -                 | -        | -               |
|                   | <b>2011</b> | 123,074,256.04        | 123,074,256.04        | -                 | -        | -               |
| <b>C/Interest</b> | <b>2010</b> | -                     | -                     | -                 | -        | -               |
|                   | <b>2011</b> | 233,587,963.67        | 233,587,963.67        | -                 | -        | -               |
| <b>API</b>        | <b>2010</b> | -                     | -                     | -                 | -        | -               |
|                   | <b>2011</b> | 87,595,486.37         | 87,595,486.37         | -                 | -        | -               |
| <b>Corp. Tax</b>  | <b>2010</b> | -                     | -                     | -                 | -        | -               |
|                   | <b>2011</b> | -                     | -                     | -                 | -        | -               |
| <b>Dividend</b>   | <b>2010</b> | -                     | -                     | -                 | -        | -               |
|                   | <b>2011</b> | -                     | -                     | -                 | -        | -               |
| <b>Total</b>      | <b>2010</b> | <b>428,281.18</b>     | <b>422,252.23</b>     | <b>6028.95</b>    |          | <b>6,028.95</b> |
|                   | <b>2011</b> | <b>444,351,020.03</b> | <b>444,350,554.40</b> | <b>465.63</b>     |          | <b>465.63</b>   |

# RESULTS OF RECONCILIATION

***Royalty:*** The Saltpond Offshore Producing Company Ltd paid royalty of US\$ 314,755.73 in 2010.

In 2011 royalty payment amounted to US\$123,074,256.04 and was made up of in-kind payment of 1,087,943.13 barrels which was sold by the GNPC for US\$122,941,273.64; and payment by SOPCL amounting to US\$132,982.40

***Carried interest*** in 2011 was paid in kind with 2,067,087.91 barrels which sold for US\$233,587,963.67

***Additional Paid Interest*** in 2011 was made in kind with 775,157.96 barrels which sold for US\$ 87,595,486.37

## Discrepancy

There were discrepancies in payment and receipt of surface rentals in 2010 and 2011. In 2010 a discrepancy of US\$6,028 was recorded, whilst an amount of US\$465.63 was established in 2011.

# ***DETERMINATION OF BENCHMARK REVENUE FROM PETROLEUM OPERATIONS***

***The annual Benchmark Revenue from petroleum operations shall be calculated on the basis of actual and expected average unit price for crude oil and natural gas derived from a seven-year moving average. The seven years being the 4 years immediately prior to the current financial year, the current financial year itself, and 2 years immediately following the current financial year.***

***The expected quantity shall be calculated on the basis of the expected average government take in gross oil over a three year horizon, such three years being the immediately preceding, the current financial year, and the one year ahead projection.(PRMA First schedule) (Section 17)***

**Since the state has no benefit of the past in determining benchmark prices as well as oil quantities, this important provision was not employed. It is hoped that in the years ahead, much advantage would be drawn from it.**

**Benchmark Revenue = Expected current receipts from oil + Expected current receipts**

**from gas + Expected dividends from national oil company**

## ANNUAL BUDGET FUNDING- EXPENDITURE

| ABFA Capital Expenditure Program                                   |                   |            |
|--|-------------------|------------|
| Description  | Amount            | %          |
| 1. Expenditure and Loans Amortization - Oil and Gas Infrastructure | 20,000,000        | 11.5       |
| 2. Roads Infrastructure  | 134,102,367       | 76.5       |
| 3. Agricultural Modernization Capacity Building                    | 13,147,652        | 7.4        |
| 4. Capacity Building (inc Oil and Gas)                             | 750,000           | 0.4        |
| 5. Miscellaneous   | 7,302,800         | 4.2        |
|  |                   |            |
| <b>TOTAL ABFA CAPITAL</b>  | <b>75,302,820</b> | <b>100</b> |

*Source: Budget Statement 2012*

# ***ALLOCATION TO THE GHANA STABILIZATION AND HERITAGE FUNDS***

## ***4 Allocation to the Ghana Stabilization and Heritage Funds***

| <b>Allocation to Ghana<br/>Petroleum Funds</b> | <b>Ghana<br/>Stabilization Fund</b> | <b>%</b>    | <b>Heritage Fund</b> | <b>%</b>    |
|--|-------------------------------------|-------------|----------------------|-------------|
| Budget   | 70,254,651.04                       | 70          | 30,109,136.16        | 30          |
| <b>Actual</b>                                  | <b>82,008,345</b>                   | <b>81.7</b> | <b>21,799,687</b>    | <b>18.3</b> |

*Source: MoFEP 2011 Fiscal data*



# ***INVESTMENT OF GHANA PETROLEUM FUNDS***

## ***Petroleum Fund Euro clear Bond investments***

| <b>Investment</b>                         | <b>Amount Invested(\$)</b> | <b>Yield(\$)</b> |
|---|----------------------------|------------------|
| <b>Ghana Stabilization Fund – 3Months</b> | <b>54,800,000</b>          | <b>32,471.18</b> |
| <b>Ghana Heritage Fund -6 Months</b>      | <b>14,400,000</b>          | <b>39,206.59</b> |
| <b>TOTAL</b>                              | <b>69,200,000</b>          | <b>71,677.77</b> |

***Source: Bank of Ghana***

# CHALLENGES

## ***The EITI reporting process:***

**The EITI reporting process has been challenging as companies and government institutions were reluctant to provide data. The Bank of Ghana declined to provide details of the petroleum Holding Fund Account. In general oil companies (SOPCL excluded) were not willing to provide information beyond payments made to the government. Some actually stated their unwillingness or inability to provide information beyond that which is statutorily required.**

**The terms of reference for the assignment however required the Reconciler to analyze and comment on some details including operating cost, capital allowance computation, prices and liftings by GNPC and the IOC'S.**

## ***Recommendation:***

**The Steering committee should discuss with the participants, both state owned Agencies and IOCs. The terms of reference should be discussed with them, as well as the time required for the completion of reports.**

# FINDINGS

## *The EITI reporting process:*

The EITI reporting process has been challenging as companies and government institutions were reluctant to provide data. The Bank of Ghana declined to provide details of the petroleum Holding Fund Account. In general oil companies (SOPCL excluded) were not willing to provide information beyond payments made to the government. Some actually stated their unwillingness or inability to provide information beyond that which is statutorily required.

The terms of reference for the assignment however required the Reconciler to analyze and comment on some details including operating cost, capital allowance computation, prices and liftings by GNPC and the IOC'S.

## *Recommendation:*

The Steering committee should discuss with the participants, both state owned Agencies and IOCs. The terms of reference should be discussed with them, as well as the time required for the completion of reports.

# COMPUTATION OF ROYALTIES

## *Approximation and Direct Methods of computation.*

**Finding:** Figures generated using the approximation method are generally lower than those by the use of direct method, reducing recorded benefits due the state. For example whilst state computed royalty for 2011 was \$122,941,143.90 the use of direct method of calculating royalty resulted in \$ 138,116,947.

**Recommendation:** The use of approximation method to compute state receipts of petroleum proceeds especially royalty needs to be revisited as figures are at variance with those obtained by the use of direct method. Royalties are exacted on gross sales proceeds so state computation of royalties should not be net of oil marketing costs which in 2011 alone was  
US\$ 314,415.

# CAPITAL GAINS TAX

## *Capital Gains Tax*

### *Finding*

**Tullow Oil Plc. acquired the only indigenous partner in the Jubilee oil field, EO Group Limited in 2011. The reconciler did not come across any capital gain tax in the transaction. It appears there is no clear provision on capital gains tax in the PITL. However according to the GRA, section 41 of PITL is applicable and tax on assignment of interest is due.**

**The Petroleum Revenue Management Act, Act 815 section 6(e) indicate capital gains tax derived from the sale of ownership of exploration, development and production rights as a possible receipt for the petroleum holding fund.**

### **Recommendation:**

**It is recommended that GRA pursues the issue of capital gains tax on the E.O Group's acquired 1.75% equity and other such acquisitions to its logical conclusion. It may also be prudent for the necessary legislation on capital gains to be streamlined as the E.O Group acquisitions may only be the beginning of such transactions.**

# THIN CAPITALIZATION

**Finding:** Interest expense is generally deductible in determining the chargeable income for corporate tax purposes. There is however no provision in the PITL that relates to excessive interest charges. There is the risk that petroleum contractors may use unlimited interest payments to strip profits, resulting in lower corporate tax payments. However, Section 41 of the PITL, 1987 provides that without express exemption of a contractor from taxation, the general law or provisions thereof relating to taxation may apply. This provision according to the GRA ensures that provisions on limitations in interest deductions in ACT 2000, the Internal Revenue Act is applicable in the petroleum sector.

**Recommendation:**

Explicit provisions in the petroleum sector, for protecting the tax base from excessive interest deductions should be provided as a matter of urgency. There is the need to harmonise the provisions in the PITL and the Internal Revenue Act, Act 2000.

# RING FENCING

## Finding

**Ring fencing refers to the limitation on consolidation of income and deductions for tax purposes by the same taxpayer, for different projects or different activities.**

**Ring fencing legislation has been passed, under the Internal Revenue (Amendment) Act, 2012, ACT 839, to disallow the deduction of expenses exclusively incurred in a mining area against revenue derived from another mining area belonging to the same taxpayer or in which the taxpayer has an interest in the determination of chargeable income.**

**Currently the petroleum industry does apply ring fencing to contracts. However a contractor may set off expenses that are exclusive to a block against income from another production block. This may delay corporate tax revenues.**

## Recommendation:

**Legislation similar to the amendment on ring fencing in the mining sector, should be introduced in the petroleum industry to production areas. As many fields commence production ring fencing legislation is needed to ensure early corporate tax receipts. This however should be viewed against the need to obtain more geological data from greenfields.**

# INFORMATION ON PAYMENT

## Finding:

Saltpond Offshore Producing Company Ltd (SOPCL) made payments of royalty in 2010 and 2011 into the Non Tax Revenue /GOG account. The Non Tax Revenue Division of the Ministry of Finance and Economic Planning, operator of the accounts was not alerted of the payment. SOPCL did not obtain receipts for the payment made.

## Recommendation

Since, PRMA became operational, petroleum payments are to be made into the Petroleum Holding Fund. To avoid situations as indicated above, the Bank of Ghana should regularly update the GRA on all payments made by licence holders. This will ensure that receipts are properly provided to these companies. Reconciliations of amounts paid into the petroleum holding fund would be made easier.



## CONCLUSION

GNPC paid an amount of US\$ 444,124,723.69 to the Government of Ghana in 2011. This amount represented payment for carried interest of US\$233,587,963.67; Additional paid interest of US\$87,595,486.37 and Royalty of US\$122,941,273.64.

As at the end of 2011, GNPC owed its Jubilee partners an amount of US\$33,308,728. This amount does not include GNPC'S share of the purchase cost of the FPSO.

The computation of government revenues using the approximation method should be scrutinised.