ODUJINRIN & ADEFULU

WHEN FISCAL REFORMS COLLIDE

Reconciling **The Petroleum Industry Act** and **The Nigeria Tax Act** on Decommissioning and Abandonment Funds

Introduction

On 26 June 2025, the President signed the new Nigeria Tax Act ("NTA") into law, introducing a unified fiscal framework aimed at consolidating the country's tax legislation. In the process, several fiscal provisions previously embedded in other laws, including the Petroleum Industry Act, 2021 ("PIA") were migrated into the NTA. However, this transition has resulted in certain substantive shifts that now raise questions about consistency and alignment between the NTA and the PIA.

One key area of divergence with the PIA is the treatment of the Decommissioning and Abandonment ("D&A") Fund. Under the PIA[1], licensees and lessees were required to establish and manage the fund without explicit conditions for tax deductibility. The NTA[2], introduces a new requirement, making tax deductibility contingent on depositing a minimum of 30% of contributions into an escrow account in an accredited Nigerian bank.

This new rule effectively alters the fiscal and operational dynamics for oil companies. It also raises critical questions regarding the relationship between the PIA and the NTA, and the practical implications for oil and gas operators as the NTA takes effect from 1 January 2026.

The PIA Framework for D&A Fund

The PIA establishes a structured regime for decommissioning and abandonment obligations as it requires every lessee and licensee to set up and maintain a dedicated fund for this purpose. The fund, is to be held in an escrow account with a non-affiliated financial institution, accessible to the Nigerian Upstream Petroleum Regulatory Commission ("the Commission") or the Nigerian Midstream and Downstream Petroleum Regulatory Authority ("the Authority").[3] Pre-existing contributions are to be rolled into this new structure, and future contributions are determined by an approved decommissioning plan submitted within one year of the commencement of the PIA.

The PIA restricts the D&A Fund strictly to the funding of D&A costs. If an operator fails to carry out the D&A in accordance with approved plan, the regulator may access the D&A Fund to contract a third party to complete the work. Before approving a D&A plan, the regulator has a duty to consider factors such as reuse potential of facilities and whether all feasible decommissioning options have been evaluated.

1. Section 233 of the PIA, 2021
2. Section 86 of the Nigeria Tax Act, 2025
3. Section 233 (1), (2) and (3) of the PIA, 2021

Building on this framework, Section 233(11) of the PIA addresses the fiscal treatment of the D&A Fund. Contributions made by licensees and lessees are expressly tax deductible and eligible for cost recovery, allowing operators to offset these amounts against taxable income. However, costs paid directly out of the D&A Fund are neither deductible nor recoverable, thereby eliminating the possibility of a double tax benefit.

Where a surplus remains after completion of D&A activities, the PIA requires that it be treated as income for tax purposes, with applicable deductions made before any balance is returned to the operator.[4]

The Nigeria Tax Act's Approach to the D&A Framework

The NTA represents a significant shift in how D&A Fund is treated for tax purposes. While the PIA allowed straightforward deductibility of contributions, the NTA provides that deductibility is no longer automatic.[5]

The key change is the introduction of a 30% local deposit rule. For a company's D&A contributions to qualify for tax relief, at least 30% of the fund must be placed in a Nigerian bank, in an escrow account accessible by the regulator. In other words, the NTA now ties fiscal benefit directly to local content.

Further, the NTA stipulates that the Nigerian bank holding the fund must be accredited by the Central Bank of Nigeria (CBN) in collaboration with the Nigerian Revenue Service.[6] This mechanism ensures that only vetted, financially sound institutions can manage these sensitive funds. It reflects the government's intent to reduce risk, tighten oversight, and bring the management of the D&A Fund firmly under domestic regulatory control.

Tax Deductibility in Conflict: Interpreting the PIA-NTA Overlap

The interaction between the PIA and the NTA reveals an unmistakable legislative conflict with far-reaching fiscal implications. On one hand, the NTA strengthens financial oversight by requiring that at least 30% of the D&A Fund be held with an accredited Nigerian bank, beyond the escrow arrangement contemplated under the PIA. On the other hand, it transforms tax deductibility into a policy instrument, conditioning fiscal relief not merely on PIA compliance, but also proactive implementation of local content objectives in Nigeria's financial system.

4. Section 233(12) of the PIA, 2021
5. Section 86 (a) of the Nigeria Tax Act, 2025
6. Section 86 (b) of the Nigeria Tax Act, 2025

Section 233 (11) of the PIA provides:

"From the effective date, contributions to the decommissioning and abandonment fund shall be eligible for cost recovery and shall be tax deductible, provided that decommissioning and abandonment costs disbursed from the decommissioning and abandonment fund shall not be eligible for cost recovery or deductible for tax purposes."

By contrast, Section 86 of the NTA provides:

"Notwithstanding section 233(1) of the Petroleum Industry Act, a provision made for decommissioning and abandonment fund shall not be deductible for tax purposes, except (a) the licensee or lessee deposit a minimum of 30% of the decommissioning and abandonment fund with a Nigerian Bank, in the form of an escrow account accessible by the Commission or Authority; and (b) the Nigerian bank is accredited in accordance with the criteria for accreditation for participation in the management of the fund, determined by the Central Bank of Nigeria in collaboration with the Service."

The phrase "Notwithstanding Section 233(1) of the PIA" leaves no doubt about legislative intent. It makes the NTA the controlling authority on tax deductibility, even where the PIA had earlier granted more generous treatment.

This aligns with the settled principle of statutory interpretation that later, specific legislation prevails over earlier general provisions. In effect, the PIA establishes the obligation to fund D&A, but the NTA dictates the fiscal consequences.

Practically, this means that compliance with the PIA no longer guarantees tax deductibility. Unless companies meet the NTA's local deposit and accreditation requirements[7], their contributions may be disallowed for tax purposes. This dual regime, where one statute governs industry conduct and the other dictates tax outcomes, illustrates the NTA's new role as both arbiter and gatekeeper of fiscal benefits.

The impact of Section 86 is not uniform across the industry. For indigenous companies, the amendment brings little change, as they are already required to maintain their D&A Fund entirely within Nigerian escrow accounts.[8] For international oil companies (IOCs), however, the implications are substantial.

Under the PIA framework, IOCs were only obligated to contribute 15% of their D&A Fund locally with the CBN, keeping the balance offshore.[9] Section 86 of the NTA now raises the threshold to a minimum of 30%, to be with accredited Nigerian banks.

7. The Act specifies that the criteria for this accreditation are to be determined by the Central Bank of Nigeria in collaboration with the Service. It does not detail the specific process or list the criteria that the Central Bank of Nigeria and the Service will develop for this accreditation.
8. Regulation 19 (4) of the Decommissioning and Abandonment Regulations, 2023
9. Regulation 19(4) (a) of the Decommissioning and Abandonment Regulations, 2023

This adjustment increases their local financial exposure, reduces liquidity flexibility, and may necessitate reconfiguration of long-term treasury arrangements. Nonetheless, the NTA's rule, though stricter at face value, offers some clarity. Under the PIA's D&A Regulation, the local escrow deposit was to rise gradually, 15% initially, 25% by the third year, and 100% after five years[10], a framework driven mainly by local content policy, not tax deductibility.

The NTA, can therefore be said to have overridden this graduated approach by setting a fixed 30% deposit as the condition for tax relief. This simplifies compliance, provides fiscal certainty, and allows IOCs to plan funding and recoverability with greater predictability.

Currently, most operators maintain their D&A Fund escrow accounts with the CBN. This arrangement is deliberate, as the PIA framework specifically designates the CBN as custodian[11], reflecting concerns about the capacity and neutrality of commercial banks to manage such sensitive, long-term funds. The CBN was therefore considered as the safest and most transparent option for holding these reserves.

However, this raises a new question under Section 86 of the NTA: whether the CBN itself qualifies as a "Nigerian bank"? The question is particularly relevant since the CBN, together with the Nigerian Revenue Service, is responsible for accrediting Nigerian banks eligible to manage the D&A Funds.

If the CBN does not meet the definition of a Nigerian bank, then existing D&A escrows may no longer satisfy the NTA's conditions. This creates uncertainty for operators who are compliant under the PIA but may fall short under the NTA, highlighting the need for clearer harmonisation between both regimes.

What is clear, however, is that with the NTA's implementation, Nigerian commercial banks have a timely opportunity to position themselves as trusted custodians of D&A Funds, transitioning from the CBN-led framework to a more market-driven framework. In practical terms, companies can no longer rely solely on compliance with the PIA to achieve tax deductibility, as Section 86 now makes fiscal relief contingent on alignment with Nigeria's banking and tax framework.

[10] Regulation 20(3) (b) and (c) of the Decommissioning and Abandonment Regulations, 2023
[11] Regulation 19(4) of the Decommissioning and Abandonment Regulations, 2023

Conclusion

The reform under the NTA highlights how fiscal provisions can significantly reshape industry practice. While its immediate impact falls more heavily on IOCs than indigenous operators, it signals a broader policy shift toward localising financial obligations and tightening oversight through tax law. It is likely that other aspects of the new legislation will produce similar ripple effects.

Operators would therefore be well advised to undertake a holistic review of their obligations and financing structures ahead of the January 1, 2026, commencement date, ensuring that both regulatory and fiscal considerations are properly aligned. This is a timely moment for companies to assess their readiness under the evolving framework and to seek informed guidance that supports sound compliance and strategic positioning.

Authors

Dr. Adeoye Adefulu
Managing Partner
adeoye.adefulu@odujinrinadefulu.com

Lateef Bamidele
Senior Associate
lateef.bamidele@odujinrinadefulu.com

Tawakalt Oseni
Associate
tawakalt.oseni@odujinrinadefulu.com

Contact Address

Lagos Office
No. 1 Ademola Street,
Ikoyi, Lagos, Nigeria.
T: +234 127 149 612,
+234 708 6450 720

Abuja Office
3rd Floor, WAEC Complex
10, Zambezi Crescent
Maitama, Abuja, Nigeria
T: +234 805 090 2150

Port Harcourt Office
16A, Manilla Pepple Street,
D'Line, Port Harcourt,
Rivers State, Nigeria
T: +234 70 869 53468

ODUJINRIN
& ADEFULU