Regulation of offshore petroleum activities in Ireland
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This memorandum provides an overview of the offshore petroleum regulatory regime in Ireland.

The Government of Ireland (the “Government”) continues to seek to attract oil and gas companies to explore Ireland’s relatively underexplored offshore. With the Corrib gas project approaching first gas (Ireland’s first source of indigenous gas since 2003), no Irish oil production to date and no other upstream oil and gas projects currently being developed in Ireland, the Government’s efforts to increase exploration investment in Ireland are well understood.

To this end, the Government has sought to bring the regulation of petroleum safety in line with international best practice and continues slowly to streamline other regulatory processes affecting the oil and gas sector. Further, the Government has actively sought to promote investment in Ireland’s indigenous oil and gas resources through favourable fiscal terms for petroleum activities. The current fiscal terms in part reflect this policy objective but also reflect the level of technical challenge and risk inherent in the exploration of Ireland’s offshore. Following ongoing debate as to the perceived generosity of the regime and in an effort to confer greater certainty, a revised fiscal regime has now been proposed by the Government following an independent review by Wood Mackenzie and is expected to be introduced into legislation in 2015.

The significant activity in petroleum licensing following on from the 2011 Atlantic Margin Licensing Round was encouraging and it is hoped this level of activity will continue with the 2015 Atlantic Margin Licensing Round.

This memorandum provides an overview of the offshore petroleum regulatory regime in Ireland. The first part of this memorandum considers the petroleum authorisations that may be granted in Ireland, including their key terms. The second part of this memorandum considers taxation for, and other key consents and regulations that apply to, offshore petroleum activities in Ireland.

As various aspects of the regulatory regime in respect of offshore petroleum activities are currently subject to review, this memorandum takes stock of the current regulatory position and the authors note that further changes in this area are likely in the near future.
2. Overview of the offshore petroleum regulatory regime

The principal legislation governing the exploration for, and exploitation of, petroleum in Ireland is the Petroleum and Other Minerals Development Act 1960 (the “1960 Act”). Other legislation and departmental guidelines also impact on this area.

Under the 1960 Act, all petroleum in the State is vested in the relevant Minister, currently the Minister for Communications, Energy and Natural Resources (the “Natural Resources Minister”). Other than the Natural Resources Minister, no person is permitted to explore for, or exploit, petroleum in the State unless the person holds an appropriate authorisation. There are various types of authorisations that the Natural Resources Minister may grant, from the right to conduct geological and geophysical surveys pursuant to a ‘petroleum prospecting licence’ through to the right to produce petroleum pursuant to a ‘petroleum lease’.

The 1960 Act should be read with the Licencing Terms for Offshore Oil and Gas Exploration, Development and Production 2007 (the “Licensing Terms”). The Licensing Terms are published by the Division of Communications, Energy and Natural Resources (DCENR) and set out the application requirements for authorisations as well as the terms on which each type of authorisation will be granted. The Licensing Terms indicate the ‘terms on which the Minister is prepared to issue the various authorisations’ and are generally afforded contractual status by incorporation into authorisations. The Licensing Terms apply to authorisations awarded after 1 January 2007.

While the 1960 Act continues to set the petroleum licensing regime at a high level, the Government has recognised the need to review and update the 1960 Act in light of legislative developments at both a national and European Union level, including ‘planning, safety and environmental legislation’. The DCENR is currently reviewing the 1960 Act accordingly.

Within the DCENR, the Petroleum Affairs Division (PAD) is the division responsible for management of petroleum authorisations and maximising the benefits to the State from exploration for and production of indigenous oil and gas resources and should be the first port of call for companies with an interest in Ireland’s offshore oil and gas resources (www.dcenr.gov.ie/Natural/Petroleum+Affairs+Division).

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1. The 1960 Act applies to onshore and offshore petroleum.
2. 1960 Act, ss 4 and 5.
6. The DCENR has noted that: ‘For authorisations awarded prior to 1 January 2007 or Leases/Lease Undertakings awarded as a result of a discovery made under a licence awarded before 1 January 2007, the terms and conditions are set out in the Department’s Licensing Terms for Offshore Oil and Gas Exploration and Development 1992’. Refer DCENR, ‘Licensing Applications’ (n5).
8. ibid.
3. Petroleum authorisations

(a) Types of authorisations

An explanation of the various petroleum authorisations available under the 1960 Act is set out below.

(i) Petroleum prospecting licence

A petroleum prospecting licence is a non-exclusive licence giving the holder the right to search for petroleum. The licensee may do all such things it considers necessary or desirable to ascertain the character, extent or value of petroleum in the licence area including, for example, undertake geological and geophysical examinations, make borings and remove reasonable quantities of petroleum for the purpose of analysis.

Pursuant to the Licensing Terms, a petroleum prospecting licence will confer on the licensee the right to search for petroleum in any part of the Irish offshore which is not the subject of an exploration licence, reserved area licence or petroleum lease granted to another party. The Licensing Terms provide that a petroleum prospecting licence may be granted for a period of up to three years and the overall duration of the licence, including any extension, may not exceed three years. A petroleum prospecting licence can be surrendered at any time on one month’s written notice.

Petroleum prospecting licences may be used for the purpose of conducting regional seismic surveys and are required to be held in conjunction with licence and lease undertakings (as discussed below).

(ii) Licence undertaking or 'licensing option'

The Natural Resources Minister may undertake to grant any person an exploration licence or a petroleum prospecting licence on such terms and conditions as the Natural Resources Minister may determine. The Licensing Terms provide further details on the terms on which such licence undertakings or 'licensing options' will generally be granted in respect of exploration licences.

A licensing option provides the holder with the first right to an exploration licence (or licences) over all or part of the area covered by the option. The option may be exercised at any time during the term of the option. The term and area of a licensing option will be determined by reference to the work programme agreed with the Natural Resources Minister. The overall duration of a licensing option, including any extension, may not exceed three years.

The PAD has previously noted that ‘first right’ in this context means that the holder of the option will be granted an exploration licence, and applications from other parties will not be considered, where the holder has complied with the conditions of the licensing option, met the necessary criteria for applicants under the Licensing Terms (such as technical competence) and proposed a work programme for the exploration licence which is acceptable to the Natural Resources Minister.

The holder of the option must perform a work programme, as agreed with the Natural Resources Minister, and hold a petroleum prospecting licence during the term of the licensing option. The work programme may require, for example, that the holder procure all available technical data and studies in relation to the option area, undertake new studies and data acquisition as necessary and submit an assessment of the petroleum resource potential of the option area. Work programmes will not include exploration well drilling but may include seabed coring and shallow drilling.

The Government has invited applications for licensing options in its recent licensing rounds, as discussed further below.

(iii) Exploration licence

An exploration licence gives the licensee the exclusive right to search for petroleum in the area covered by the licence. The licensee may do all such things it considers necessary or desirable to ascertain the character, extent or value of petroleum in the licence area including, for example, undertake geological and geophysical examinations, make borings and remove reasonable quantities of petroleum for the purpose of analysis.

10. 1960 Act, s 9(5).
11. Licensing Terms, s 8.
12. Licensing Terms, s 9.
13. Licensing Term, s 10.
15. Licensing Terms, s 11.
16. Licensing Terms, s 11.
17. Licensing Terms, ss 12 and 14.
18. Licensing Terms, s 14.
20. Licensing Terms, s 13.
22. ibid.
23. 1960 Act, s 8.
necessary or desirable to ascertain the character, extent or value of petroleum in the license area including, for example, undertake geological and geophysical examinations, make borings and remove reasonable quantities of petroleum for the purpose of analysis.\textsuperscript{24}

Under the Licensing Terms, there are three categories of offshore exploration licence: a standard exploration licence for water depths of up to 200m; a deep water exploration licence for water depths exceeding 200m in any part of the area; and a frontier exploration licence for areas specified by the Natural Resources Minister as a ‘Frontier Area’ because of special difficulties relating to the physical environment, geology or technology.\textsuperscript{25}

A standard exploration licence is valid for six years, a deep water exploration licence for nine years and the duration of a frontier exploration licence must not be less than 12 years.\textsuperscript{26} An exploration licence, or part of the licensed area, can be surrendered on three month’s written notice provided that the licensee has complied with all obligations under the licence.\textsuperscript{27}

For standard and deep water exploration licences, the licensee is obliged to carry out a work programme which must include the drilling of an exploration well in the first phase.\textsuperscript{28} For frontier exploration licences, the PAD has noted that the first phase work programme may require geophysical data acquisition and, where appropriate, seismic reprocessing.\textsuperscript{29} A frontier exploration licensee must commit to at least one exploration well in order to proceed to the second phase.\textsuperscript{30}

Frontier exploration licensees are required to make annual contributions to petroleum research programmes.\textsuperscript{31} The amount of such contributions is set out in Appendix 1 to the Licensing Terms.

For further information on exploration licence phases and surrender requirements, refer to the summary below.

<table>
<thead>
<tr>
<th></th>
<th>Standard &lt;200m</th>
<th>Deep Water &gt;200m</th>
<th>Frontier</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Term</strong></td>
<td>Six years</td>
<td>Nine years</td>
<td>Not less than 12 years</td>
</tr>
<tr>
<td><strong>Phases</strong></td>
<td>Two x 3 year phases</td>
<td>Three x 3 year phases</td>
<td>Maximum of four phases</td>
</tr>
<tr>
<td><strong>Exploration well required</strong></td>
<td>Phase 1</td>
<td>Phases 1 and 2</td>
<td>Phase 2, and possibly phase 3</td>
</tr>
<tr>
<td><strong>Acreage surrender</strong></td>
<td>End first phase: 50% of the licensed area</td>
<td>End first phase: 50% of the licensed area</td>
<td>End first phase: 25% of licensed area</td>
</tr>
<tr>
<td></td>
<td></td>
<td>End second phase: 50% of the then licensed area</td>
<td>End second phase: 50% of the then licensed area</td>
</tr>
</tbody>
</table>

While the licence provides exclusive rights to search for petroleum, the Licensing Terms do allow the Natural Resources Minister under special circumstances to allow a neighbouring authorisation holder to engage in limited exploration in the licensed area where required for the neighbouring party to obtain sufficient knowledge about the geological conditions in its authorisation area.\textsuperscript{32}

\textsuperscript{24} 1960 Act, s 8(7).
\textsuperscript{25} Licensing Terms, s 16.
\textsuperscript{26} Licensing Terms, ss 17, 18 and 19.
\textsuperscript{27} Licensing Terms, s 21.
\textsuperscript{28} Licensing Terms, ss 17 and 18.
\textsuperscript{29} DCENR, ‘2015 Licensing Round – Atlantic Margin’ (n 19) 4.
\textsuperscript{30} Licensing Terms, s 19.
\textsuperscript{31} Licensing Terms, s 19(4).
\textsuperscript{32} Licensing Terms, s 15(2).
(iv) Lease undertaking
The Natural Resources Minister may undertake to
grant any person a petroleum lease on such terms
and conditions as the Natural Resources Minister may
determine.\(^\text{33}\) The Licensing Terms provide further details
on the terms on which such lease undertakings will be
granted.

Under the Licensing Terms, a lease undertaking may
be granted to the holder of an exploration licence or
licensing option where the licensee has made a discovery
and has been unable to confirm that the discovery is
commercial ‘but is of the opinion that it may become
commercial’.\(^\text{34}\) If the Natural Resources Minister concurs
with this opinion, the Natural Resources Minister will
undertake to grant a petroleum lease in relation to that
part of the licensed area that contains the discovery.\(^\text{35}\) The
licensee must apply for a lease undertaking no later than
three months before the expiry of the exploration licence
or licensing option.

The holder of the undertaking will be required, among
other things, to establish the discovery as being
commercial and to then apply for a petroleum lease by a
specified date. The holder of the undertaking must use its
best endeavours to establish commerciality.\(^\text{36}\) The holder
of a lease undertaking is required to hold a petroleum
prospecting licence during the period of the lease
undertaking.\(^\text{37}\)

The effective date of the petroleum lease will be four
years (in the case of an oil discovery) or six years (in the
case of a gas discovery) after the relinquishment or expiry
of the exploration licence, or such earlier date as may
be agreed.\(^\text{38}\) The lease undertaking can be terminated by
agreement between the holder of the undertaking and the
Natural Resources Minister.\(^\text{39}\)

(v) Petroleum lease
The 1960 Act provides that the Natural Resources
Minister may demise the petroleum in an area to any
party by way of a petroleum lease if it is in the public
interest to do so.\(^\text{40}\) A petroleum lease vests in the lessee
the right to produce the demised petroleum from the
leased area.

Under the Licensing Terms, where an authorisation holder
makes a commercial discovery, it must notify the Natural
Resources Minister and apply ‘forthwith’ for a petroleum
lease.\(^\text{41}\) A discovery is considered to be commercial
where the proceeds expected from the sale of oil or gas
produced are sufficient to cover all production costs and
deliver a reasonable profit.\(^\text{42}\)

The application for a petroleum lease must include a
development outline and financial and marketing plans
based on a likely production profile. The Licensing
Terms provide that if the Natural Resources Minister
is satisfied that a commercial discovery has been
made – by reference to the likely production profile
and the applicant’s development outline, financial plan
and marketing plan – it will be the duty of the Natural
Resources Minister to grant a petroleum lease.\(^\text{43}\)

Within one year of the issue of the petroleum lease,
the lessee will be required to submit a detailed plan
of development for approval by the Natural Resources
Minister and an environmental impact statement of the
likely effects of the development on the environment.\(^\text{44}\)
Once approved, the lessee must not make any material
deviation from the plan of development without the
Natural Resources Minister’s approval.\(^\text{45}\) Operations must
not commence in the leased area without the prior written
approval of the Natural Resources Minister.\(^\text{46}\)

The term of a petroleum lease will be determined on a
case by case basis, having regard to the likely production
profile and may be extended on terms agreed by the
Natural Resources Minister and lessee.\(^\text{47}\) A lessee may
surrender a petroleum lease at any time on 12 months’

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33. 1960 Act, s 7.
34. Licensing Terms, s 24.
35. Licensing Terms, s 24.
36. Licensing Terms, s 26.
37. Licensing Terms, s 25.
38. Licensing Terms, s 26(e).
39. Licensing Terms, s 27.
41. Licensing Terms, s 29.
42. Licensing Terms, s 28.
43. Licensing Terms, s 29.
44. Licensing Terms, s 30(1).
45. Licensing Term, s 30(4).
46. Licensing Terms, s 30(2)
47. Licensing Terms, s 31.
written notice but such surrender is without prejudice to the lessee’s obligations and liability under the terms of the lease.  

The Natural Resources Minister may require the joint exploitation of any petroleum field that extends across the boundaries of two or more areas held under an exploration licence or petroleum lease and may stipulate the conditions for such joint exploitation. The Natural Resources Minister may require a joint development if he deems it ‘desirable to do so in order to achieve rational and optimum exploitation’.  

The Licensing Terms also provide the Natural Resources Minister with the right to require the owners of any developed facilities to enter into discussions with third parties for the use of those facilities. The Natural Resources Minister may exercise this right ‘with a view to the optimum exploitation of petroleum in the national interest’. If the parties are unable to agree on the terms of the use of facilities, the matter may be referred to arbitration.  

The Licensing Terms detail further conditions on which the Natural Resources Minister is prepared to issue a petroleum lease. In addition, the petroleum lease may also contain a number of clauses over and above those set out in the Licensing Terms.  

(vi) Reserved area licence  
A reserved area licence may be granted to a petroleum lessee in respect of an area adjacent to or surrounding the leased area. A reserved area licence will be granted on the same terms and conditions as an exploration licence.

48. Licensing Terms, s 34.  
49. Licensing Terms, s 32.  
50. Licensing Terms, s 63.  
51. 1940 Act, s 19.  
52. Licensing Terms, s 35.
(b) Key terms of petroleum authorisations

A summary of the key provisions of the Licensing Terms that apply to petroleum authorisations generally is set out below.

**Rental fees:** Annual rental fees are payable for all authorisations. The fees are set out in Appendix 1 to the Licensing Terms. The Natural Resources Minister has the right to increase all money amounts in the Licensing Terms at any time."^{53}

**Joint obligations:** Where an authorisation is held by more than one company, the obligations under the authorisation are joint and several"^{54} and the Natural Resources Minister’s approval is required for any change of operator."^{55} Any operating agreement between the companies, and any amendment thereto, must be provided to the Natural Resources Minister for information purposes."^{56}

**Good industry practice:** There is a general obligation on authorisation holders to conduct their activities in accordance with good industry practice and the appropriate Rules and Procedures Manual issued by the Natural Resources Minister."^{57} The PAD has prepared Rules and Procedures Manuals in respect of offshore petroleum exploration and appraisal operations and offshore petroleum production operations. These manuals are available to prospective and current authorisation holders directly from the PAD."^{58} The Licensing Terms include

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53. Licensing Terms, s 45.
54. Licensing Terms, s 43.
55. Licensing Terms, s 57.
56. Licensing Terms, s 57.
57. Licensing Terms, s 53.
general provisions in respect of health and safety and the protection of the environment, property and petroleum bearing strata.\textsuperscript{59}

**Indemnities, insurance and security:** The Licensing Terms require an authorisation holder to indemnify the Natural Resources Minister against a broad range of claims, demands or damages and provide that the authorisation holder shall obtain insurance on terms approved by the Natural Resources Minister.\textsuperscript{60} The Natural Resources Minister may also direct an authorisation holder to post a performance bond or guarantee in respect of the obligations under the authorisation and any liability which may be incurred in relation to the relevant activities.\textsuperscript{61} In our experience, the Natural Resources Minister may require petroleum lessees to provide a parent company guarantee in respect of all obligations under the lease as well as security in respect of decommissioning costs, as discussed further below.

**Abandonment:** Authorisation holders are responsible for the abandonment of fixed facilities. Under the Licensing Terms, abandonment means the ‘removal, part removal or leaving in place of any installation or facility following completion of operations involving such installation of facility’.\textsuperscript{62} The Licensing Terms also include requirements in respect of the drilling, plugging and abandonment of wells.\textsuperscript{63} In our experience, the Natural Resources Minister may require petroleum lessees to enter into a decommissioning agreement, the form of which will be included as a schedule to the petroleum lease. Pursuant to the decommissioning agreement, the petroleum lessees are required to provide security for decommissioning costs and seek the Natural Resources Minister’s approval of the decommissioning plan.

**Assignment and transfers:** The Natural Resources Minister’s prior consent is required for any assignment or transfer of an interest, ‘directly or indirectly, in whole or in part’, of any rights under an authorisation.

**Revocation and arbitration:** The Licensing Terms include various grounds on which an authorisation may be revoked, including the failure to pay monies, substantial breach of any law, direction or condition, any material change in the technical competence of the authorisation holder and insolvency of the authorisation holder. The Licensing Terms provide for force majeure\textsuperscript{64} and for disputes to be settled by arbitration proceedings.\textsuperscript{65}

**Sale of petroleum:** The Licensing Terms require that all petroleum must be sold by, and payment made to, a person resident in Ireland on an arm’s length commercial basis.\textsuperscript{66}

\textsuperscript{59} Licensing Terms, ss 59 and 60.
\textsuperscript{60} Licensing Terms, s 44.
\textsuperscript{61} Licensing Terms, s 42.
\textsuperscript{62} Licensing Terms, s 69.
\textsuperscript{63} Licensing Terms, s 58.
\textsuperscript{64} Licensing Terms, s 52(4).
\textsuperscript{65} Licensing Terms, s 51.
\textsuperscript{66} Licensing Terms, s 67.
Applicable taxation requirements are outlined below.

(c) Process for release of acreage and licence awards

Ireland’s offshore acreage is divided into open and closed areas for the purpose of acreage release. Ireland’s Celtic Sea, St George’s Channel and Irish Sea fall within an open area, where applicants may apply for exploration licences and licensing options at any time. Ireland’s Atlantic Margin is a closed area, where acreage is released only through licensing rounds announced by the Natural Resources Minister. A map showing the open and closed areas, as well as licences and leases in force, is available on the PAD’s website.

The Government invited applications for licensing options that provided a first right to a frontier exploration licence in the most recent licensing round held in 2011. Similar licensing options are also on offer in the 2015 Atlantic Margin Licensing Round.

The grant of any authorisation is determined against the following criteria: (i) the applicant’s proposed work programme; (ii) the applicant’s technical competence and offshore experience; (iii) the financial resources available to the applicant; (iv) the applicant’s health, safety and environmental policy; and (v) where relevant, previous performance as an authorisation holder. A scoring system has been used to consider applications in recent licensing rounds. The highest proportion of marks is typically allocated to the quality of the proposed work programme, with the applicant’s technical competence and experience the next most heavily weighted criteria.

Applications will be accepted from companies incorporated under the laws of a Member State of the European Union and from foreign companies.

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67. Licensing Terms, s 2(4).
70. DCENR, ‘2015 Licensing Round – Atlantic Margin’ (n 21) 1.
71. Licensing Terms, s 3.
73. Licensing Terms, s 1(3).
4. Taxation

An authorisation holder (other than a petroleum prospecting licensee) must be, and remain, chargeable in accordance with the laws of Ireland to tax in respect of profits and gains arising from, or connected with, exploration and exploitation activities or rights to which the authorisation applies. 74

(a) Profits from petroleum activities 75

The Government has sought to promote investment in indigenous oil and gas exploration by creating favourable fiscal terms for exploration and production activities. The fiscal regime incorporates a corporation tax and a profit resource rent tax (PRRT). Production-related royalties have been abolished.

(i) Corporation tax (CT)

Profits from petroleum activities are subject to CT at a rate of 25%.

(ii) Profit Resource Rent Tax (PRRT)

For petroleum leases granted after 1 January 2007, a PRRT is charged in addition to corporation tax. PRRT is payable at an incremental rate depending on the profit ratio of a petroleum field.

For the purposes of PRRT 76, the profit ratio of a petroleum field is calculated as follows:

\[
\text{Profit ratio} = \frac{\text{Profits for the field, net of any corporation tax}}{\text{Accumulated capital investment in the field}}
\]

Different rates of PRRT apply, depending on the profit ratio as follows:

<table>
<thead>
<tr>
<th>Profit Ratio</th>
<th>Profit Resource Rent Tax</th>
<th>CT Rate</th>
<th>Effective rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1.5</td>
<td>0%</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>1.5 or more and less than 3</td>
<td>5%</td>
<td>25%</td>
<td>30%</td>
</tr>
<tr>
<td>3 or more and less than 4.5</td>
<td>10%</td>
<td>25%</td>
<td>35%</td>
</tr>
<tr>
<td>4.5 or more</td>
<td>15%</td>
<td>25%</td>
<td>40%</td>
</tr>
</tbody>
</table>

Where a company is carrying on petroleum activities in more than one field, each field is treated as a separate trade for PRRT purposes. This means that losses in one field cannot be offset against profits from another to reduce or eliminate the profits liable to PRRT.

(iii) Petroleum Production Tax (PPT)

In May 2014, the Natural Resources Minister received the Wood Mackenzie Report 77 (the “Report”) into the ‘fitness for purpose’ of Ireland’s fiscal terms for petroleum activities. In summary, the Report recommended that a new tax, PPT, is introduced which would replace PRRT in future licences. The PPT rate would be variable and determined by the level of profitability by each field. This is similar to the current system but under the PPT the “profit ratio” would be replaced with an ‘R Factor’, calculated as:

\[
R \text{ factor} = \frac{\text{cumulative field gross revenues less PPT paid}}{\text{cumulative field costs}}
\]

74. Licensing Terms, s 36.
The ‘R factor’ is calculated on a ‘pre-CT’ basis, rather than ‘post-CT’ basis in the current PRRT system.

<table>
<thead>
<tr>
<th>R Factor</th>
<th>Proposed Petroleum Production Tax Rates</th>
<th>CT rate</th>
<th>Effective rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 1.5</td>
<td>0%</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>1.5</td>
<td>10%</td>
<td>25%</td>
<td>32.5%</td>
</tr>
<tr>
<td>1.5 &lt; R &lt; 4.5</td>
<td>pro rata</td>
<td>25%</td>
<td>varies</td>
</tr>
<tr>
<td>&gt; 4.5</td>
<td>40%</td>
<td>25%</td>
<td>55%</td>
</tr>
</tbody>
</table>

The Report also recommended the introduction of a ‘minimum PPT payment’ of 5% of the field’s gross revenue each year. Thus, if the ‘normal PPT’ payable is less than the 5% of the field’s gross revenue in any year, then the PPT payable will be 5% of gross revenue.

In October 2014, the Natural Resources Minister announced that ‘the 2015 Finance Bill will provide for new fiscal arrangements recommended in the Report.’

The notice for the 2015 Atlantic Margin Licensing Round states that any licensing option granted on the basis of an application pursuant to the notice will be subject to the revised fiscal terms.

When the Natural Resources Minister announced the proposed revised fiscal terms in June 2014, he advised that any changes to the fiscal regime would not be retrospective.

(b) Expenditures

Exploration expenditure means capital expenditure incurred on petroleum exploration activities and payments made to the Natural Resources Minister in respect of licences other than a petroleum lease. When a trade of petroleum extraction activities commences, exploration expenditure incurred should be deemed to have been incurred on the day trade commences and can be offset against petroleum profits. Abortive exploration expenditure incurred within 25 years prior to the commencement of the trade of petroleum extraction activities can also be offset. Exploration expenditure incurred by a company in one field may be utilised against profits earned by the company in another field. Income from petroleum activities is ring fenced from other trading activities, so that petroleum expenses (and mining expenses) may only be set against petroleum profits and petroleum profits may only be relieved by petroleum losses.

Companies are also entitled to an allowance of equal to 100% of production and development capital expenditure in the course of carrying on a petroleum trade, following the commencement of the production or development of petroleum in commercial quantities. This is usually taken as the date on which the Natural Resources Minister approves the plan of development for the petroleum field.

(c) Relevant Contracts Tax

Relevant Contacts Tax (RCT) is a withholding tax on payments for ‘relevant operations’. Relevant operations include any operations which form an integral part of, or are preparatory to, or are for rendering complete, the drilling for or extraction of minerals, oil, natural gas, or the exploration for, or exploitation of, natural resources. Other works on the seabed and in harbours and docks may also be within the scope of the RCT regime.

RCT is applied on payments from the Principal to the Subcontractor. The obligation to deduct RCT rests with the Principal, who accounts for the tax to Irish Revenue. There are three RCT rates, namely 0%, 20% or 35%. The applicable rate depends on the subcontractor’s tax compliance history and registration status with Irish Revenue. The RCT system is operated online through the Irish Revenue’s online system.

79. DCENR, ‘2015 Licensing Round – Atlantic Margin’ (n 21) 1.
(a) Foreshore regulation

A lease or licence must be obtained from the Minister for the Environment, Community and Local Government (the “Environment Minister”) to occupy, to carry out any works or place any structures or materials on, or to remove material from, the State-owned foreshore. The Environment Minister’s approval is also required to erect any permanent structure on privately owned tidal lands, including foreshore areas. The foreshore is the seabed and shore below the high water mark of ordinary or medium tides and extends outwards to the limit of the territorial sea (ie, twelve nautical miles from the baseline). A foreshore lease or licence may be required, for example, where a gas pipeline crosses the foreshore and for any survey, investigation and construction activities on the foreshore.

(b) Planning regulation

For the purposes of onshore planning approval, the development of petroleum infrastructure is now generally deemed to be a ‘strategic gas infrastructure development’ under the Planning and Development Act 2000, as amended by the Planning and Development (Strategic Infrastructure) Act 2006 (the “Strategic Infrastructure Act”). Such developments require the approval of An Bord Pleanála (ABP). Prior to the introduction of the Strategic Infrastructure Act, planning applications were determined by local authorities, with any appeal of local authority decisions being determined by ABP.

(c) Infrastructure regulation

A range of authorisations are required in relation to the development of oil and gas infrastructure including, for example, the consent of the Natural Resources Minister to erect and remove structures in any Continental Shelf Designated Areas and to construct and operate upstream pipelines.

(d) Safety regulation

A new risk-based petroleum safety framework for petroleum exploration and extraction activities came into effect in December 2013, pursuant to the Electricity Regulation Act 1999, as amended by the Petroleum (Exploration and Extraction) Safety Act 2010. The framework is in line with international best practice and supplements existing workplace health, safety and welfare legislation.

The framework comprises a number of components, including permission, compliance assurance, incident investigation and enforcement systems. The framework applies to ‘petroleum undertakings’, being any person to whom a petroleum authorisation has been granted, and there is a general obligation on all petroleum undertakings to reduce all safety risks to a level that is as low as is reasonably practicable (or ‘ALARP’).

Under the framework, designated petroleum activities may only be conducted pursuant to an approved safety case and permit. Designated petroleum activities include activities in relation to wells (including drilling, testing, completion, interventions, plugging and abandonment), petroleum production (including raising, storing and treating petroleum and the commissioning, operating and maintaining of infrastructure) and decommissioning of petroleum infrastructure.

The Commission for Energy Regulation (CER) is now the regulator responsible for upstream petroleum activities in Ireland (www.cer.ie).

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81. Foreshore Act 1933, ss 2 and 3.
82. Foreshore Act 1933, s 10. However, pursuant to the General Scheme of the Maritime Area Development and Foreshore (Amendment) Bill (the “General Scheme”), it is currently proposed that the relevant coastal local authority will have authority to approve the erection of structures on privately owned foreshore areas going forward rather than the Environment Minister. Department of the Environment, Community and Local Government, ‘General Scheme’, www.environ.ie/en/Foreshore/PublicationsDocuments/FileDownload,34315,en.pdf, head 21.
83. “Strategic gas infrastructure development” is defined as any proposed development comprising or for the purposes of a strategic downstream gas pipeline or a strategic upstream gas pipeline, and associated terminals, buildings and installations, whether above or below ground, including any associated discharge pipe. Planning and Development Act 2000, s 1(1).
84. Planning and Development Act 2000, s 182C.
85. Continental Shelf Act 1968, s 5.
86. Gas Act 1976, s 40.
87. Petroleum (Exploration and Extraction) Safety Act 2010, s 13K.
(e) Environmental regulation

Certain activities to be conducted pursuant to petroleum authorisations may be subject to an environmental impact assessment (EIA) and, if the proposal concerns a ‘Natura 2000’ site (being a designated special area of conservation or special protected area), an appropriate assessment (AA). Both of these processes are prescribed by separate legislative frameworks at a European level that have been implemented in Irish legislation.

In addition to the Natural Resources Minister, the Environment Minister (in relation to the grant of any foreshore lease or licence or foreshore development approval) and ABP (in relation to onshore planning approval) may be required to undertake EIAs and AAs.  

In addition to the EIA and AA processes, certain petroleum activities require an integrated pollution control licence, issued by the Environmental Protection Agency. The licence covers facility emissions and environmental management.

89 The Government is proposing to amend the current overlap in regulatory requirements regarding the conduct of EIAs and AAs by integrating the foreshore and maritime area consent processes with the onshore planning process. Responsibility for consenting to petroleum strategic infrastructure developments is proposed to be assigned to ABP such that the Environment Minister and the Natural Resources Minister would no longer be required to carry out an EIA or AA where ABP has provided consent for the development. However, it is proposed that responsibility for consenting to exploration and prospecting activities will remain with the Natural Resources Minister. ‘General Scheme’, www.environ.ie/en/Foreshore/PublicationsDocuments/FileDownload,34315,en.pdf, head 3.
6. Joint operating agreements

Joint operating agreements for offshore Ireland are often based on model form agreements such as the Oil and Gas UK and Association of International Petroleum Negotiators (AIPN) documents. Given the limited oil and gas activity in Ireland to date, companies will often look to international practice, particularly the UK, when preparing joint operating agreements. However, there are differences in the regulatory regimes between Ireland and other jurisdictions that need to be taken into account when drafting joint operating agreements including, for example, decommissioning security arrangements and pre-emption rights. There is also no reason why a joint operating agreement or any other agreement cannot be governed by the laws of Ireland and indeed authorisations (including petroleum leases) will be governed by the laws of Ireland and certain disputes may be subject to arbitration in Ireland.

7. Conclusions

The significant activity in petroleum licensing following on from the 2011 Atlantic Margin Licensing Round suggests that Ireland’s current petroleum licensing and fiscal regimes are encouraging participation in Ireland’s offshore. Going forward, the outcome of the 2015 Atlantic Margin Licensing Round may signal whether the proposed revised fiscal regime will continue to encourage such participation and provide sufficient certainty for participants. The Government’s continuing efforts to bring the regulation of offshore petroleum activities in Ireland into line with international best practice will also assist companies conducting activities in Ireland through improved clarity and efficiency.

However, while licensing and fiscal regimes are obviously important in attracting more investment in the exploration of Ireland’s offshore, these factors alone will not guarantee further investment in Ireland’s oil and gas sector. Recent experience has shown that certain key permitting processes in Ireland have become heavily weighted against those seeking to exploit Ireland’s oil and gas resources. There is a real need to examine and revise the permitting of onshore and near-shore infrastructure that is part of the development of offshore fields to ensure that the concerns raised by parties with legitimate interests are taken on board prior to project sanction and that strategic energy infrastructure projects are then not delayed indefinitely as a result of legal challenges. Such delays and challenges cause significant costs for developers and ultimately result in substantial loss and deferment of state revenue and discourage investment in Ireland.