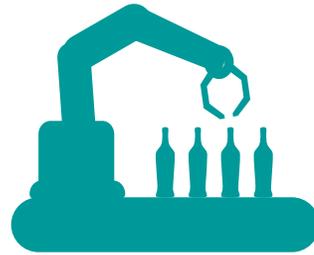




Abstract

- The Petroleum Income Tax Act of 1967 (PITA) governs the taxation of joint ventures (JV) and implements the ring-fencing concept for upstream activities taxation in Malaysia's oil and gas sector.
- This study examines the interpretation of chargeable person (CP) among oil and gas industry taxpayers within the context of PITA, focusing on joint ventures status.
- Using action research methodology, this study engaged 18 participants involved with oil and gas industry who are IRBM auditors, taxpayers and policymakers through focus group discussions.
- The findings provide a detailed framework for interpreting CP status, strengthening tax compliance and protecting government revenue.
- This research significantly expands upon the public ruling issued in November 2023, providing an analytical framework for interpreting JV status as CP under tax law.

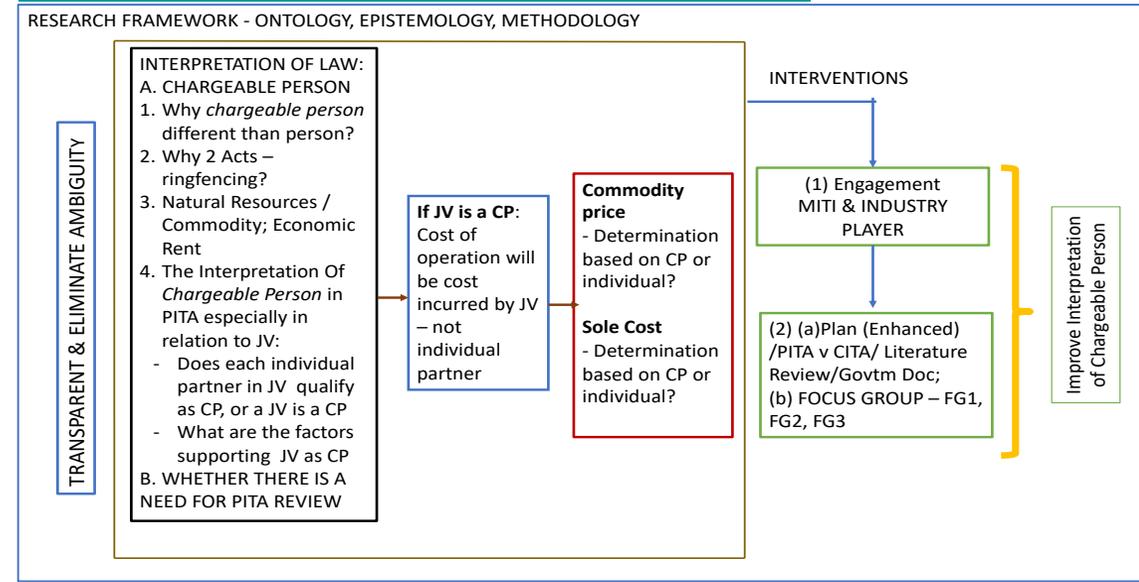


Objectives

- The objective of this study is to improve the interpretation of CP among the relevant parties to enhance clarity and effectiveness for PITA purposes

Conceptual Framework Developed by the researcher

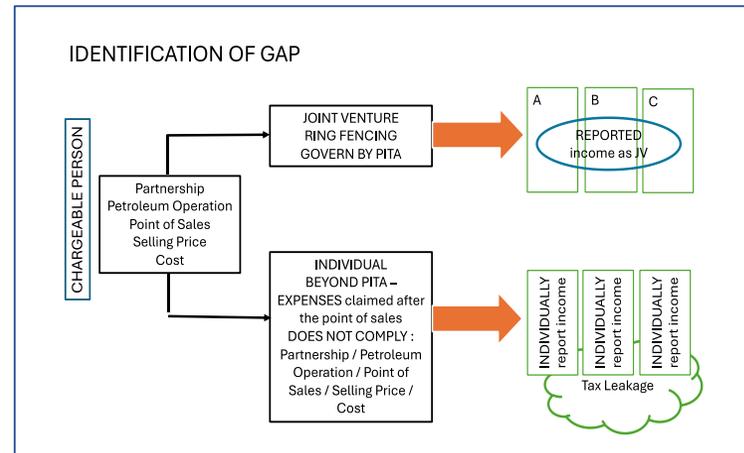
Figure 2



Problem Statement

- The theory of economic rent highlights that land with scarce resources or monopolized assets, such as O&G, must be fairly compensated to ensure that neither the government nor investors incur losses (Shobande, 2020). As such, effective monitoring of the PITA is essential to maintain this balance.
- Discrepancies in the interpretation of CP result in gaps in tax reporting and payments, which need to be addressed.
- Figure 1 illustrates the gap in reported income under two scenarios: when CP is defined as an individual partner versus when CP is defined as a JV, as required by PITA.

Figure 1 Problem Statement



Research Questions

- PITA refers to person chargeable to tax as 'chargeable person' while in ACP it is refer as 'person'. The two different term used lead to different way of calculating taxable income under PITA v ACP.
- However, a different approach to tax computation has been observed, where each partner prepares their own calculations before consolidating them to form a single chargeable entity.
- The question remains whether it is appropriate to treat the joint venture as a single taxable entity or if it should be assessed separately for tax purposes

Methodology

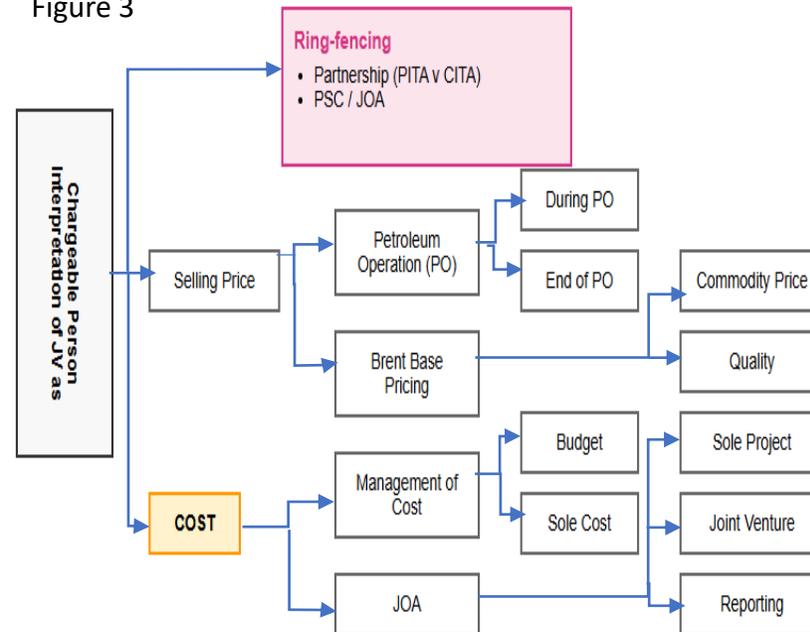
- Action research applied with interventions organised through two cycles.
- The preliminary study, attended by MITI, focused on understanding the industry environment, the relevant agencies managing investors, and the perspectives of both industry players and IRBM regarding O&G upstream taxation. The two intervention cycles involved discussions with focus groups comprising IRBM auditors handling upstream taxpayers, industry players, and policymakers.
- In the first cycle, participants' level of understanding was assessed by comparing their acceptance of the interpretation of CP with that observed during the preliminary study. During this cycle, findings from an examination of audit reports, a review of earlier scholarly writings on the law, a comparison of terms used in PITA versus CITA, and publicly available documents from the National Oil Company (NOC) were shared with the focus group. These sources helped enhance participants' understanding of CP in relation to JV during the discussions.
- In the second cycle, discussions centred on presenting the findings and assessing the group's level of understanding and acceptance.
- This study adopts methodological triangulation by integrating multiple data collection methods including interviews, observations, and document analysis. This approach enables a more comprehensive understanding of the phenomenon under investigation and mitigates potential biases associated with reliance on a single method.
- The validity of the data was tested through multiple sources, including analysis and comparison of the interpretations of provisions in PITA versus CITA, data from Production Sharing Contract (PSC) and Joint Operating

Agreement (JOA), references to HMRC, other agency guidelines, and academic journals.

Findings

- Findings from the focus group discussions indicate that both the selling price and associated costs are within the control of the joint venture, thereby supporting the interpretation of the joint venture as a CP
- This aligns with PITA's definition of CP, as opposed to "person." If "person" were used in calculating the tax computation, the selling price and costs for each individual would differ, resulting in a different outcome after combining each partners taxable income as one CP.

Figure 3



- This research offers valuable insights to improve CP interpretation for PITA purposes with Issued public rulings and detailed guidelines explaining JV as chargeable person rationale.

- Provide systematic explanations of ring-fencing principles, cost allowability, and market pricing at point-of-sale to prevent tax leakage and disputes.

Conclusion

- The main findings of the study show that the interpretation of Chargeable Person (CP) is more accurate and effective for the purpose of implementing PITA compared to the use of the general term person in the ACP.
- This finding is reinforced by the results of the focus group discussions, which showed an increase in participants' understanding of the position of the JV as a CP after two rounds of discussions.
- Literature reviews such as Burns (2005), Martin (2020), and Al-Attar (2005) also support the need for JVs to be taxed as a single entity, in line with the concept of PSC and JOA contracts.
- Comparisons with other countries such as Indonesia and Nigeria show that the practice of taxing JVs as separate entities is common in their PSC regimes.
- Overall, this study concludes that the use of the term Chargeable Person in PITA is more inclusive, clear and consistent with the reality of petroleum operations compared to the use of person in the ACP

Research Gap

- In conclusion, there are areas of research that have yet to be explored, such as quantitative assessment of the fiscal impact of the implementation of CP on JVs, comparative analysis with practices of other PSC countries, as well as studies of the effectiveness of IRBM guidelines and the level of industry compliance in the long term.