



## Indonesia Tax Alert September 2019

### Updates in the Energy and Resources Sector

#### Tax Facilities for Cost-Recovery Production Sharing Contract ("PSC")

The Minister of Finance ("MoF") issued Regulation No. 122/PMK.03/2019 on 27 August 2019 ("**PMK-122**") regarding Facility on Value Added Tax and Sales Tax on Luxury Goods ("**VAT**"), Land and Building Tax ("**L&BT**"), and Tax Treatment on Joint Facility Cost Sharing and Head Office Cost Allocation.

PMK-122 is the implementing regulation of Article 26E of Government Regulation No. 79 Year 2010 ("**GR-79**") as amended by Government Regulation No. 27 Year 2017 ("**GR-27**") regarding Cost Recovery and Income Tax Treatment in the Upstream Oil and Gas Sector.

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## Eligible PSCs

PMK-122 is applicable to PSCs ("Qualified PSCs") that:

1. Were signed prior to the effective date of Oil and Gas Law No. 22 Year 2001 ("**Law No. 22**"), which have been adjusted to conform with GR-27;
2. Were signed post the effective date of Law No. 22 and prior to the effective date of GR-79, which have been adjusted to conform with GR-27;
3. Are cost-recovery PSCs signed post the effective date of GR-79, which have been adjusted to conform with GR-27; and
4. Are cost-recovery PSCs signed post the effective date of GR-27, which already conforms with GR-27.

## VAT and L&BT Facilities

### *Exploration PSCs*

During exploration period, Qualified PSCs are eligible for the following VAT facilities:

1. Non-collected VAT payable on:
  - a. VAT-able goods and/or services used/utilized in upstream operations;
  - b. Offshore intangible VAT-able goods utilized in upstream operation in Indonesian customs areas; and
  - c. offshore VAT-able services utilized in upstream operations in Indonesian customs area; and/or
2. Full (100%) reduction of oil/gas L&BT.

In order to access the VAT and L&BT facilities above, Qualified PSCs should apply to the Regional Tax Office ("**RTO**" or *Kantor Wilayah*) that oversees the tax service office where the PSC company is registered. The RTO will issue an Exploration Tax Facilities Letter ("**Exploration SKFP**") based on the application.

Vendors supplying VAT-able goods and/or services to Qualified PSC companies must obtain a copy of the Exploration SKFP and issue VAT invoices on the delivery, marked with the non-collected VAT status.

In respect of the L&BT, the Qualified PSCs should also submit the L&BT object returns and Exploration SKFP to the tax service office that administers the L&BT. Directorate General of Taxation ("DGT") will subsequently issue the L&BT payable returns, including the 100% L&BT reduction based on the Exploration SKFP.

### *Exploitation PSCs*

During exploitation period (including field management, transportation, storage, and sales of upstream products), Qualified PSCs are eligible for the following VAT facilities:

1. Non-collected VAT payable on:
  - a. VAT-able goods and/or services used/utilized in upstream operations;
  - b. offshore intangible VAT-able goods utilized in upstream operations in Indonesian customs area; and
  - c. offshore VAT-able services utilized in upstream operations in Indonesian customs area; and/or
2. Maximum 100% reduction of oil/gas L&BT related to sub-surface land.

These facilities are provided by MoF based on consideration of project economics from the Minister of Energy and Mineral Resources. These facilities are only available for PSC projects that cannot achieve the required Internal Rate of Return (IRR) and are:

1. Located in deep sea;
2. Having potential hydrocarbon content in high pressure, high temperature, or high CO<sub>2</sub> and H<sub>2</sub>S impurities;
3. Located in area with limited supporting upstream infrastructure or offshore/onshore field with no supporting upstream infrastructure;
4. Secondary and tertiary field development; and/or
5. Non-conventional field development.

In order to access the VAT and L&BT facilities above, Qualified PSCs should apply to the RTO that oversees the tax service office where the PSC company is registered. The application should include recommendation letter for project economics from MoF, along with the calculation of project economics. The RTO will issue an Exploitation Tax Facilities Letter ("**Exploitation SKFP**") based on the application.

The Exploitation SKFP should be replaced with a new Exploitation SKFP if there is a change of the PSC operator.

Vendors supplying VAT-able goods and/or services to Qualified PSC companies must obtain a copy of the Exploitation SKFP and issue VAT invoices on the delivery, marked with the non-collected VAT status.

In respect of the L&BT, the PSCs should also submit the L&BT object returns and Exploitation SKFP to the tax service office that administers the L&BT. DGT will then issue the L&BT payable returns, including the L&BT reduction based on the Exploitation SKFP.

### **Joint Facility Cost Sharing and Head Office Cost Allocation ("HOA")**

#### *Cost Sharing*

Cost sharing on joint facility owned by the State shall be VAT- and Withholding Tax ("**WHT**")-exempt, provided that:

1. The facility that is acquired by the PSC represents State asset;
2. The utilization of joint facility has been approved by SKK Migas; and
3. There is no gain/profit on the utilization of the joint facility.

#### *HOA*

HOA shall be VAT- and WHT-exempt, provided that:

1. It is utilized to support business in Indonesia;
2. The PSC contractor provides the audited consolidated financial statements of the head office and the relevant cost allocation basis;
3. The amount does not exceed that is allowed under the MoF regulation regarding HOA.

The VAT and WHT exemptions on cost sharing and HOA above may be applicable to Qualified PSCs and cost recovery PSCs signed prior to the effective date of GR-27, if the PSC is unclear on the cost sharing and HOA treatments.

### **Effective Date**

PMK-122 will be effective from 26 September 2019.

### **Updates on the Payment Procedures for Domestic Market Obligation ("DMO") Fee and Over/Under Lifting to PSC Contractors**

The MoF issued Regulation No. 118/PMK.02/2019 dated 16 August 2019 ("**PMK-118**") concerning payment procedures for DMO fee and PSC contractor's over/under lifting. PMK-118 revoked MoF Regulation No. 139/PMK.02/2013 as amended by MoF Regulation No. 230/PMK.02/2015 on the same subject.

PMK-118 broadly maintains the rules under previous regulations. The key changes under PMK-118 are as follows:

1. The involvement of the Upstream Oil and Gas Regulatory Body of Aceh (*Badan Pengelola Migas Aceh*/"**BPMA**") in the payment procedures for:

- a. PSCs signed by SKK Migas but the working area is located in areas under BPMA's authority, or
  - b. PSCs signed by BPMA;
2. SKK Migas or BPMA may now offset the DMO fee or Under Lifting payment with any overpayment of VAT reimbursement;
3. SKK Migas or BPMA will now require the PSC contractor to submit report on payment of DMO fee and Under Lifting;
4. SKK Migas or BPMA may offset the Over Lifting or Under Lifting with gas sales proceeds kept in the trustee/paying agent accounts, provided that this arrangement has been agreed in writing with the PSC contractor.

PMK-118 is effective from 16 August 2019.

## Updates on the Payment Procedures for VAT Reimbursement to PSC Contractors

The MoF issued Regulation No. 119/PMK.02/2019 dated 16 August 2019 ("**PMK-119**") concerning payment procedures for VAT reimbursement to PSC contractors. PMK-119 revoked MoF Regulation No. 218/PMK.02/2014 as amended by MoF Regulation No. 158/PMK.02/2016 on the same subject.

PMK-119 broadly maintains the rules under previous regulations. The key changes under PMK-119 are as follows:

1. The involvement of BPMA in the payment procedures for:
  - a. PSCs signed by SKK Migas but the working area is located in areas under BPMA's authority, or
  - b. PSCs signed by BPMA; and
2. In the case the VAT reimbursement rights are governed differently by a PSC, then such reimbursement implementation must follow those outlined by the PSC.

PMK-119 is effective from 16 August 2019.

## Bookkeeping in English language and US Dollar currency for ex-CoW IUPK-OP Companies

On 27 August 2019, The MoF issued Regulation No. 123/PMK.03/2019 ("**PMK-123**"), which constitutes the third amendment to MoF Regulation No. 196/PMK.03/2007.

PMK-123 adds ex-Contract of Work ("**CoW**") Production Operation Special Mining Business Permit (*Izin Usaha Pertambangan Khusus – Operasi Produksi* or "**IUPK-OP**") holders as one of the taxpayers eligible to maintain bookkeeping in English language and US Dollar currency, provided that the expired CoW governs the obligation to maintain books in English language and US Dollar currency.

The ex-CoW IUPK-OP holder is allowed to maintain the books in English language and US Dollar currency up to the end of the year when the IUPK-OP is issued. Thereafter, the IUPK-OP holder must file a notification letter to the tax office on the maintenance of books in English language and US Dollar currency no later than three months prior to the end of the year when the IUPK-OP is issued. If the IUPK-OP holder files no notification letter, then it must maintain books in Bahasa language and Indonesian Rupiah currency.

PMK-123 is silent on the transition in the case where the ex-CoW IUPK-OP is issued in the last quarter of the fiscal year, where it is not possible to file a notification letter three months prior to the last book year end.

PMK-123 will be relevant for the expiring first generation of Coal Cooperation Agreement, which may later be converted into an IUPK-OP.

## Update on the Import Duty and VAT Facilities for CoW Companies

The MoF issued Regulation No. 116/PMK.04/2019 dated 13 August 2019 ("**PMK-116**") regarding Import Duty and/or VAT Exemption or Relief under CoW or Coal CoW ("CCoW"). PMK-116 revoked MoF Regulation No. 259/PMK.04/2016.

PMK-116 provides more clarity on CoWs/CCoWs that are eligible for import duty/ VAT facilities and the associated facilities validity period, i.e.:

1. If the CoW/CCoW includes the import duty and VAT facilities and:
  - a. The CoW/CCoW specify the validity period, then the facilities are applicable up to the end of the period stipulated under the CoW; or
  - b. The CoW/CCoW does not specify the validity period, then the facilities are applicable up to the first ten (10) years of the Production Operation period.
2. The following CCoWs are eligible for import duty exemption up to the end of the CCoW expiry date:
  - a. CCoWs signed prior to 1990;
  - b. CCoWs that provides import duty exemption facility;
  - c. CCoWs that does not specify the import duty facility validity period; and
  - d. CCoWs which the imported goods of which are owned by the State.
3. For CoWs/CCoW that includes import duty facility and does not include or include import VAT facility, provided that they fulfil the provisions of laws/regulations, then these CoWs/CCoWs are eligible for the facilities in accordance with the prevailing laws and regulations for the first ten (10) years of the Production Operation period.

PMK-116 includes the procedures for issuance of the decision on import facilities for CoW/CCoW companies by the Investment Coordinating Board (BKPM) or agency appointed by MoF, the procedures of imported goods transfer, annihilation and re-export. PMK-116 also includes certain import duty and VAT claw-back provisions in specific circumstances.

Ex-CoW/CCoW IUPK-OP is required to follow the provisions of PMK-116 in respect of ex-CoW/CCoW imported goods transfer, annihilation, and re-export.

PMK-116 will be effective from 12 October 2019.

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# Contact Persons

Please contact our Energy, Resources and Industrial (ER&I) tax specialists for any enquiries:



**Cindy Sukiman**  
Partner, Indonesia ER&I Leader  
[csukiman@deloitte.com](mailto:csukiman@deloitte.com)



**Ali Mardi Djohardi**  
Partner, Indonesia ER&I Tax Leader  
[alimardi@deloitte.com](mailto:alimardi@deloitte.com)



**John Lauwrenz**  
Partner, Business Tax and Merger & Acquisitions  
[jlauwrenz@deloitte.com](mailto:jlauwrenz@deloitte.com)



**Turmanto**  
Partner, Business Tax and Global Trade Advisory  
(Customs)  
[tturmanto@deloitte.com](mailto:tturmanto@deloitte.com)

## **Deloitte Touche Solutions**

The Plaza Office Tower, 32<sup>nd</sup> Floor  
Jl. M.H. Thamrin Kav 28-30  
Jakarta 10350, Indonesia  
Tel: +62 21 5081 8000  
Fax: +62 21 2992 8303  
Email: [iddttl@deloitte.com](mailto:iddttl@deloitte.com)  
[www.deloitte.com/id](http://www.deloitte.com/id)



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