

# Tax Issues-Oil & Gas

Tim Watson

13 March 2008

# Oil and Gas Sector

## a) Still moving/still attracting interest

- i) New frontier areas (especially deepwater, Eastern Indonesia)
- ii) New western multi-national interest (e.g. Anadarko, Marathon, Murphy, StatoilHydro)
- iii) Emerging alternative hydrocarbon activities (CBM, non-integrated LNG, LPG)
- iv) Downstream/quasi-downstream (filling stations, tank farms)
- v) New interest in associated businesses (field studies, seismic data management)

## Oil and Gas Sector (Cont.)

### b) DGT Reviews-Non liftings Income

#### i) Audit approach

- DGT “re-assumed” its audit power in 2003 (DGT Decree No. 20 of February 2003)
- Considerable audit activity (DGT, BP Migas, and BPKP-sometimes BPK)
- BPKP still copies its (cost recovery – focused) audit reports to DGT
- Can DGT assess “on behalf” of DJAPK?

## Oil and Gas Sector (Cont.)

### b) DGT Reviews-Non liftings Income

#### ii) PSC transfers

- has now been an assessment on a “direct” PSC transfer
- PSC transfer issue keeps coming up during DGT audits. Vigilance required
- “profit” calculation method remains unclear
- PSC transfers via other methods remain untested (e.g. by share sale, by farm-outs, pursuant to inter-Group transfers, mandatory transfers, etc.)
- transfer of shares in “tax haven” entities could be caught under the 5% CGT regime (Article 18(3C) of draft law)
- New tax law formally catches profits on the transfer of any “mining right” (Article 4(1)(5) of draft law)

## Oil and Gas Sector (Cont.)

### b) DGT Review-Non liftings (cont.)

#### iii) Other “non-liftings” income

- JOB uplifts.
  - A number of assessments have already issued against JOBs.
  - Have treated the uplift as additional liftings rather than interest.
  - Will this extend to commercial “carries”?

## Oil and Gas Sector (Cont.)

### b) DGT Review-Non liftings (cont.)

#### iii) Other “non-liftings” income (cont.)

- Service payments
  - A number of WHT/VAT assessments already issued on domestic transactions.
  - “Head office” allocations remain at risk. Will MoF Letter No.S-604 of November 1998 continue to be observed?
  - Inter-entity/intra-Group charges/cost allocations?
  - Even cash calls?

## Oil and Gas Sector (Cont.)

### b) DGT Review-Non liftings (cont.)

#### iv) Other areas to watch

- “Net back to field” on LNG/Gas
- Hybrid PSC interests/non-equity participations
- BPR Tax – Treaty reductions
- Crude trading profits
- FTP/investment credits/interest recovery (timing issues/penalty exposure)

## Oil and Gas Sector (Cont.)

### b) DGT Review-Non liftings (cont.)

#### v) Conclusion

- Continued DGT enquiry/assessments on a range of non-liftings' income
- Original PSC “deal” was to take production net of tax. Preserved by uniformity until early 2000s
- But uniformity not well defined. Is it now restricted to liftings income only?
- A slow dismantling?



## Oil and Gas Sector (Cont.)

### c) Import Taxes

- i) New PSC vs old PSC divide. Big concern for deepwater work programs
- ii) December 2007 regulations provide temporary relief (next 12-18 months) for exploration only
- iii) Only for Import Duty and VAT (not Article 22)
- iv) What next?

## Oil and Gas Sector (Cont.)

### d) New PSCs/New Bid round etc.

- i) Quite a bit of variation in language/most extensive changes out of recent bid rounds
- ii) More formal recognition of “operator”. BP Migas approval of this role (Art.1.1.6)
- iii) Joint and several liability amongst partners? Extend to tax? (Art.1.2.34, 5.2.23)
- iv) Enhanced conditions on PSC transfers. Notification/approval requirement if “change of control” ( $\geq 50\%$ ). No exclusion for Group takeovers. No step up for change in work practices (Art. 5.2.8-5.2.9)
- v) CSP spending not cost recoverable (Art. 5.2.22)

## Oil and Gas Sector (Cont.)

### d) New PSCs/New Bid round etc. (Cont.)

- vi) Recognition that BPR tax due only “if applicable”? Does this mean PT PSC holders don’t pay? (Art. 5.2.23-but see below)
- vii) BP Migas tax clause. “Assume & discharge” of import duty on Petroleum Operations, for regional taxes and for VAT on exploration activities. VAT is otherwise reimbursable (5.3.2). A bit clearer but still needs an underlying bureaucratic process (e.g. for a masterlist)
- viii) Reimbursable oil excludes FTP (5.3.2)
- ix) Cost recovery “ring-fencing” by field (i.e. post PoD)? (6.1.2)
- x) Higher after-tax oil/gas splits 20%/35% to 35%/40% (Art. 6.2-6.3)

## Oil and Gas Sector (Cont.)

### d) New PSCs/New Bid round etc. (Cont.)

- xi) Traditional anti-avoidance gross-up for treaty use. Now extends to PT holders? Choice to simply pay more share? (Art. 15.4.1-15.4.2)
- xii) Change in tax law not to disturb after tax splits. Quasi-uniformity? Could this protection extend to tax on non-liftings income? (Art. 15.4.3)
- xiii) New associated product provisions. Everything is within the PSC unless its outside!! Overlap with ICP? (Art. 15.5)
- xiv) Cost recovery mechanism “by field” re-inforced. First year depreciation rules altered (Annex C)
- xv) Interest recovery now gone?

# Thank you