Energy, Utilities & Resources NewsFlash

September 2019/ No. 66

Indonesia Energy, Utilities & Resources NewsFlash

MOF-257 Refresh/ Clarity on BPT on PSC Transfers?

As readers would be aware from our previous NewsFlashes (see EU&R NewsFlashes No. 39/2011, 41/2012 and 62/2017) the tax treatment of PSC transfers was initially regulated under Government Regulation No. 79/2010 ("GR-79") and GR-79's main implementing regulation being Minister of Finance ("MoF") Regulation No. 257/PMK.011/2011 ("MoF-257").

GR-79 was then amended by Government Regulation No. 27/2017 ("GR-27"). Readers may also recall that one of the more tax critical features of GR-27 was the clarification that income arising from PSC transfers was, after the payment of the 5%/7% Final Income Tax, to be then non-taxable. In other words the consideration was not subject to the 20% Branch Profit Tax ("BPT").

MoF-257 however continues to remain in force and continues to provide that BPT is due on the after-tax income arising from PSC transfers.

The MoF has recently advised that MoF-257 will be amended so as to constitute the formal implementing regulation to GR-27. This amendment should hopefully include clarification on the non-imposition of BPT on PSC transfers as stipulated under GR-27. Further comments will be provided upon the issuance of the new regulation.

We are joining the 43rd Indonesian Petroleum Association (IPA) Conference & Exhibition in Jakarta on 4 - 6 September 2019!

Please stop by our exhibition stand in the main hall of the Jakarta Convention Center to talk to our oil and gas practitioners.

New Permanent Establishment ("PE") Rules

On 1 April 2019, the MoF issued Regulation No. 35/PMK.03/2019 ("MoF-35") outlining updated rules for the recognition of a taxable "branch" (or "PE") of a foreign resident entity. MoF-35 is not specific to the resources sector and so is relevant to any foreign entity carrying on business in Indonesia other than via an Indonesian entity. However investors in the energy utility and resources sectors often bump into this issue when either procuring or providing services which result in an in-country presence for the service provider beyond the relevant PE "day-test" threshold which can vary according any relevant tax treaty (although there are in fact many other circumstances under which a PE may arise).

This aside MoF-35 provides that, if PE conditions are satisfied, then the non-resident entity is obligated to obtain tax registration in Indonesia. The PE is then subject to the tax rules largely as are applicable to an Indonesian entity.

For the most part MoF-35 is in line with PE concepts traditionally set out in the Indonesian Income Tax Law ("ITL") and international guidance. However MoF-35 does provide more detail on various interpretive issues and a clearer obligation on tax officials to register the PE as a branch. This last point is perhaps the most interesting as foreign entities have historically faced difficulties in tax-registering a branch presence which is not formally accommodated for under Indonesia's Investment Laws.

Extended VAT/Land and Building Tax Relief for PSCs

On 27 August 2019 the Minister of Finance issued PMK No.122/03/2019 ("PMK 122"). PMK 122 is a significant regulation setting out a series of concessions (both new and refreshed) for PSC contractors operating under "Conventional" PSCs (ie PMK 122 does not extend to Gross Split PSCs).

PMK 122 operates to provide concessions in relation to a series of transactions otherwise subject to Value Added Tax/Sales Tax on Luxury Goods ("VAT/LST"), and Land and Building Tax ("LBT").

PMK 122 also formalises the long awaited WHT and VAT exemptions on joint operating costs and allocations of head office costs.

We are still analysing the relevant detail of PMK 122. However at this stage it seems that PMK 122 applies to all categories of conventional PSCs being those which were signed:

a) before Law No. 22/2001;

b) between Law 22 and GR-79 (which opted to entirely follow GR-27 provisions);

c) after GR-79 as amended in accordance to GR-27; and

d) post GR-27 which are in adherence with the provisions in GR-27.

These 4 categories of PSC contractors appear to now be entitled to:

a) a VAT/LST "not collected" status on the procurement of certain goods and services (including intangibles) even where procured domestically (noting that VAT on the import of goods is already generally VAT exempt);

b) a LBT reduction of up to 100% (effectively bringing the exposure down to nil);

c) a WHT and VAT exemption on qualifying joint operating costs and the allocation of head office costs.

The concessions apply during both the exploration and exploitation periods.

The application of these concessions is subject to the issuance of "confirmation letters for the tax facilities" during both exploration and exploitation phases. Such a confirmation letter will be issued by the Head of the Regional Tax Office.

This is a potentially important new regulation and could have a significant impact on the cost profile of some PSCs particularly those in exploitation. We will provide more detail in our next NewsFlash.

US Dollar Bookkeeping for Tax Purposes for Holders of Special Mining Business Licences in "Production Operation" ("IUPK-OP")

As outlined in our EU&R NewsFlash No. 64/2018, the Government issued Regulation No. 37 Year 2018 ("GR-37") to provide special rules in relation to the tax and non-tax state revenue arrangements for the "mineral" mining sector.

GR-37 stipulates that IUPK-OP holders may maintain bookkeeping for tax purposes in accordance with the language and currency agreed in the original Contract of Work ("CoW") until the end of the tax year following the issue of the IUPK-OP. GR-37 also stipulates that the procedures to maintain bookkeeping in foreign language and currency other than Rupiah will be set out in a Minister of Finance ("MoF") regulation.

To implement GR-37, the MoF has issued Regulation No. 123/PMK.03/2019 ("MoF-123") dated 27 August 2019 as a third amendment to MoF Regulation No. 196/PMK.03/2007 regarding Procedures to Maintain Bookkeeping in Foreign Language and Currency other than Rupiah.

MoF-123 provides additional definitions of CoW holders entitled to maintain bookkeeping in foreign language (i.e. English) and foreign currency (i.e. US Dollars). The CoW holders now include IUP holders where the licence was issued out of the conversion of an "active" CoW or Coal CoW where the contract stipulates the entitlement to maintain bookkeeping in English and US Dollars.

MoFR-123 reiterates that IUPK-OP holders may maintain bookkeeping in English and foreign currency as agreed in the original CoW or Coal CoW until the end of the tax year following the issue of the IUPK-OP.

To continue the use of English and foreign currency bookkeeping for tax purposes, the IUPK-OP holder must now submit a notification to the Tax Office where it is registered at least three months prior to the end of the tax year following the issue of the IUPK-OP.

Failure to submit the notification will result in a loss of this entitlement and so an obligation to maintain the bookkeeping in Indonesian language and Rupiah currency starting from the second tax year following the issuance of the IUPK-OP.

New Regulation on VAT Reimbursement Procedures for PSCs

Readers may be aware that we outlined in EU&R NewsFlash No. 55/2015 details of MoF Regulation No. 218/PMK.02/2014 (PMK-218) regarding the procedures for VAT Reimbursement by PSC Contractors. PMK-218 was then amended by MoF Regulation No. 158/PMK.02/2016 (PMK-158).

On 16 August 2019 the MoF issued Regulation No. 119/PMK.02/2019 (PMK-119) updating the procedures for VAT Reimbursement by PSC Contractors. PMK-119 revokes both PMK-218 and PMK-158.

Although a new regulation, the provisions of PMK-119 are quite similar to PMK-218 and PMK-158 albeit with the following new provisions:

a) in addition to SKK Migas, the Aceh Oil and Gas Management Body ("*Badan Pengelola Migas Aceh*/BPMA") may now verify a VAT reimbursement submitted by PSC Contractors located in Aceh or for PSCs signed between Contractors and BPMA;

b) if a Contractors' right to obtain a VAT reimbursement is stipulated in a specific manner in the PSC in question, then the VAT reimbursement process will be adjusted to be in accordance with that PSC. This appears to recognise that some PSCs have specific reimbursement entitlements including (for a limited number) an entitlement to a direct cash refund;

c) that reimbursement is subject to confirmation from the DGT via a "Tax Clearance Document". Under the previous MoF Regulations, the availability of an original Tax Clearance Document was compulsory. PMK 119 however provides a more relaxed requirement on this point as the term "original" was deleted and there is no requirement for SKK Migas to verify the validity of the Tax Clearance Document;

d) that the authorised officials (within SKK Migas/BPMA) who can provide recommendations to the MoF (i.e. the Directorate General of Budget) for the payment of a VAT reimbursement is expanded to include, not only the Head of SKK Migas/BPMA, but also the Deputy of SKK Migas/BPMA.

Mine 2019: Resourcing the future

The latest edition of PwC's global mining thought leadership was released in June: Mine 2019: Resourcing the future, is our most recent annual review of trends in the global mining industry, as represented by the top 40 mining companies by market capitalisation. For the first time this year an Indonesian-based company, Bayan Resources Tbk met the market capitalisation cut-off at 31 December 2018 to be included in the world's Top 40 mining companies. This is a good sign of the recent growth in the industry and we expect to see more Indonesian companies make the list in the future.

Judged by traditional metrics things are looking good for the world's top miners. In 2018, as a group miners increased production, boosted cash flow, paid down debt and provided returns to shareholders at near record highs. This was all while delivering significant value to stakeholders such as employees, governments and communities. The benefits of mining flowed far and wide.

Yet investors seemed unimpressed at least judging by market returns and valuations, which fell 18% over 2018. It is clear that investors and other stakeholders are concerned that the industry is lagging on several factors including dealing with emissions, investing in differentiating technology and digitisation, engaging more proactively with consumers, and building their brand.

Strong operating fundamentals create a window of opportunity for the sector to adapt to the changing expectations of stakeholders and to reinforce the role of mining in the fourth industrial revolution. From gold in a cell phone, lithium in an electric vehicle battery or the steel from iron ore in a cooking pot - how will the industry underscore the connection between mining outputs and products that consumers rely on everyday? Can they forge a better future for industry, consumers, communities and other stakeholders?

The report can be accessed on our website:

https://www.pwc.com/id/mine-2019

We hope you find the report interesting - there are several key messages which should be of interest to miners looking to address the numerous challenges buffeting the industry. Please do not hesitate to get in touch with any of your regular PwC mining contacts to discuss the report or other mining matters.

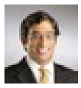
Contacts

Please feel free to contact our Energy, Utilities & Resources (EU&R) specialists or any of your regular PwC advisors.

Assurance


Sacha Winzenried
sacha.winzenried@id.pwc.com


Yusron Fauzan
yusron.fauzan@id.pwc.com


Gopinath Menon
gopinath.menon@id.pwc.com


Yanto Kamarudin
yanto.kamarudin@id.pwc.com

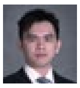

Daniel Kohar
daniel.kohar@id.pwc.com


Toto Harsono
toto.harsono@id.pwc.com


Firman Sababalat
firman.sababalat@id.pwc.com


Dodi Putra
putra.dodi@id.pwc.com


Heryanto Wong
heryanto.wong@id.pwc.com


Dedy Lesmana
dedy.lesmana@id.pwc.com


Tody Sasongko
tody.sasongko@id.pwc.com


Irwan Lau
irwan.lau@id.pwc.com

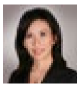
Tax


Tim Watson
tim.robert.watson@id.pwc.com


Suyanti Halim
suyanti.halim@id.pwc.com


Antonius Sanyojaya
antonius.sanyojaya@id.pwc.com


Turino Suyatman
turino.suyatman@id.pwc.com


Gadis Nurhidayah
gadis.nurhidayah@id.pwc.com


Tjen She Siung
tjen.she.siung@id.pwc.com


Alexander Lukito
alexander.lukito@id.pwc.com


Omar Abdulkadir
omar.abdulkadir@id.pwc.com


Otto Sumaryoto
otto.sumaryoto@id.pwc.com


Raemon Utama
raemon.utama@id.pwc.com


Peter Hohtoulas
peter.hohtoulas@id.pwc.com

Advisory


Mirza Diran
mirza.diran@id.pwc.com


Joshua Wahyudi
joshua.r.wahyudi@id.pwc.com


Michael Goenawan
michael.goenawan@id.pwc.com


Agung Wiryawan
agung.wiryawan@id.pwc.com


Julian Smith
smith.julian@id.pwc.com


Hafidsyah Mochtar
hafidsyah.mochtar@id.pwc.com


Ripa Yustisiadi
ripa.yustisiadi@id.pwc.com

Consulting


Lenita Tobing
lenita.tobing@id.pwc.com


Paul van der Aa
paul.vanderaa@id.pwc.com


Daven Tjandrajaja
daven.tjandrajaja@strategyand.id.pwc.com

Legal


Melli Darsa
melli.darsa@id.pwc.com


Indra Allen
indra.allen@id.pwc.com


Puji Atma
puji.atma@id.pwc.com

www.pwc.com/id

PwC Indonesia

@PwC_Indonesia