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PwC Indonesia Energy, Utilities & Mining NewsFlash

Update on Land and Buildings Tax (PBB) "Assessments" – do PSCs need to pay to perfect their appeals?

Alexander Lukito

In June 2013 the Indonesian Tax Office (ITO) issued a number of PBB "Official Assessments" (SPPTs) to "post GR-79" PSC companies. The combined assessments are thought to be in excess of some US$250 million. From August to October 2013 many PSC companies filed Objections without making any payment on the assessments.

It has now been a year since the Objections were filed and the ITO may soon issue decisions on these Objections. If these Objections are rejected, then the PSC companies may further contest their assessments by filing an Appeal with the Tax Court.

Whilst payment was not required for filing the Objections there has been a concern over whether a payment is required to perfect the Appeals.

This is an unclear area involving an interaction between the PBB Law, the KUP Law and the Tax Court Law. Issues for PSC companies to consider include:

- PBB is regulated under a specific law from 1984 which was amended in 1994 (i.e. Law No.12/1994). PBB was generally modified in 2009 into a regional tax but not for the oil & gas and mining sectors.
- Unlike other taxes, PBB is imposed under an official assessment mechanism (i.e. not a self-assessment). No tax audit/closing conference is held prior to assessment issuance.
- The 1994 PBB Law regulates specific provisions for Objections and hence the PBB Objections were generally filed under Article 15 of the 1994 PBB Law (i.e. not under Article 25 of the 2008 KUP Law).
- The PBB Law is silent on the Appeal procedures, although it does say that the PBB Appeal procedures should follow "Article 27 of KUP Law No.6/1983 as amended by KUP Law No.9/1994".
- In the context of a general tax appeal, the requirement to perfect an Appeal could follow Article 36 of the Tax Court Law (which requires at least 50% tax payment) or Article 27 of the 2008 KUP Law (which provides an exception for payment if taxpayers "disagree" at the closing conference).

Based on the points above, there are at least three possible interpretations regarding what payment should be made to perfect an Appeal on PBB:

a) *0% payment:* on the basis of the 2008 KUP Law;

b) *50% payment (at least):* on the basis of the Tax Court Law;

c) *100% payment:* on the basis of the 1994 and 1983 KUP Laws.

Given the size of some of these assessments and the appeal time frame getting this aspect right without jeopardising appeal rights could be a major concern. Professional advice should be sought where necessary.


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Accounting for joint arrangements: PSAK 66

Irwan Lau

As discussed in our EU&M NewsFlash #52, a new Indonesian accounting standard, PSAK 66, has been introduced for joint arrangements. PSAK 66 replaces PSAK 12, and is broadly the same as IFRS 11 under International Financial Reporting Standards.

Under PSAK 66, joint arrangements are classified as either joint operations or joint ventures. A joint arrangement that is not structured through a separate vehicle is a joint operation. However not all joint arrangements in separate vehicles are joint ventures: it now depends on the rights and obligations of the participants arising from the arrangement in the normal course of business and is further influenced by the economic purpose of the arrangement. A company accounts for its interest in a joint operation based on its share of assets, liabilities, revenue and costs, where a joint venture is accounted for under PSAK 15 using equity accounting.

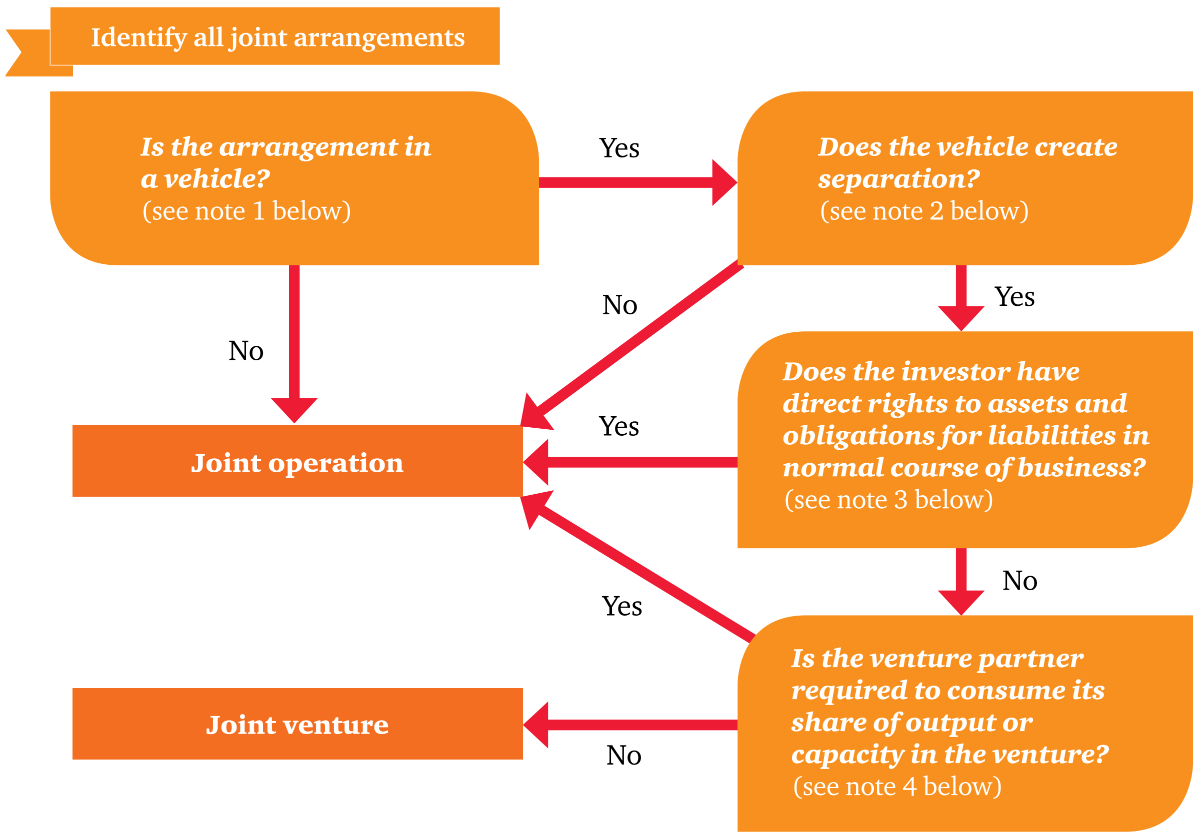
The new accounting for joint arrangements can be summarized in the following tables:

Types of joint arrangements

Joint control
- contractually agreed sharing of control
- unanimous consent over 'relevant activities'

PSAK 12 types	PSAK 66 types	Contractual rights and obligations	Accounting
Jointly-controlled assets Jointly-controlled operations	Joint operations	Rights to assets; liabilities for obligations	Direct interest of assets, liabilities, revenues, expenses
Jointly-controlled entities	Joint ventures	Rights to net assets	Equity accounting (proportionate consolidation not allowed)

Classification of joint arrangements



The new standard will become mandatory from 1 January 2015. Early adoption of the standard is not allowed. Further information on PSAK 66, including examples for the extractive industries, can be found in our EU&M NewsFlash #52.

Breaking the deadlock: mining contract renegotiation back in the spotlight

Felix Macdonogh

Following recent press coverage of the signing of Memoranda of Understanding between the Government and both PT Freeport Indonesia and PT Newmont Nusantara, Contract of Work (CoW) renegotiation is back in the spotlight. However, does the recommencement of Freeport and Newmont's operations represent a break in the deadlock between the Government and the Mining Industry? Let's take a look.

History

The introduction of the Law on Mineral and Coal Mining No. 4/2009 (the Mining Law) in January 2009 introduced significant changes to the Indonesian mining regulatory regime, including that Coal and Mineral Contracts of Work (CoWs) were no longer available for new mining projects and were to be replaced by a single area-based licensing system on specified areas.

Whilst the terms of existing CoWs would be honoured, Article 169(b) of the Mining Law indicated that the provisions of existing CoWs must be amended within one year to conform with the Mining Law (excluding provisions related to state revenue). Following this, the Government initiated discussions with most CoW holders. In order to expedite proceedings, Presidential Decree No. 3/2012 was issued on 10 January 2012 which established a team, headed by the Coordinating Minister of Economic Affairs and comprised of a number of ministers, to renegotiate the terms of the CoWs.

Points of renegotiation

The renegotiations have focused on the following six key points:

1. **domestic processing & refining** – The Mining Law introduced downstream processing requirements. Following the issuance of Government Regulation No.1/2014, Minister of Finance Regulation No.6/2014 and Minister of Energy and Mineral Resources Regulation No.1/2014 on 11 January 2014, miners were required to increase the level of value-added processes which were carried out in-country and the export of unprocessed ores was banned (except certain semi-processed products which were subject to a progressively increasing export duty prior to full implementation of the ban). Whilst many contractors contested whether these new provisions should apply whilst their CoWs were in place or whether the requirements were economically justified, the Government refused to provide export permits to a number of companies that did not agree to these provisions;

2. **divestment** – The Government is looking for contractors to agree to follow the provisions of the Mining Law and Ministry of Energy and Mineral Resources Regulation No. 27/2013 which requires foreign shareholders to divest up to 51% of their interest in the CoW holding company by the end of the 10th year of production;

3. **state revenue** – The Government proposes that contractors should adopt the generally higher royalty rates as set out under Government Regulation No. 9/2012. However, where the contract royalty rate is higher (often the case for coal) the contract rate would remain. Tax provisions are to follow the prevailing regulations. However, the Corporate Income Tax rate is to remain at the (generally) higher CoW rate;

4. **contract extension** – No further extensions will be permitted in the form of a CoW and any extensions permitted will be in the form of a licence under the new system without a tender process (where provided for under the contract and where the contract has not already been extended);

5. **contract area** – The Government is looking for contractors to make additional relinquishments to bring the acreage closer to that of licences issued under the Mining Law;

6. **local content** – Restrictions are to be imposed regarding the use of affiliated service companies and promoting the use of local service contractors.

Update

As of July 2014, the Ministry of Energy and Mineral Resources had targeted 112 mining companies for mining renegotiation and has stated that of these 28 have agreed to renegotiate.

However the Government then:

a. issued Ministry of Finance Regulation No.153/ PMK.011/2014 which provides for significantly reduced export tariffs for minerals. This is provided that a commitment had been made to construct domestic processing and refining capabilities (see more below).

b. undertook to issue a new regulation which would reduce the divestment requirement of miners with smelters to 40% and underground miners to 30%.

It was then announced in the press that both PT Freeport Indonesia and PT Newmont Nusantara had entered into Memoranda of Understanding agreeing to negotiate the terms of their CoW and, following the issuance of their export permits, would start paying royalties at the higher prevailing rates on copper concentrate.

Conclusion

The statements from the contract holders around formal discussions with the Government and the fact that the Government has issued regulations to limit some of the negotiation roadblocks might signal a more general way forward on CoW renegotiations. However, it is still not clear that more than five years on from the issuance of the Mining Law any significant progress has been made in finalising renegotiated terms. The industry will be keen to see the new Government's approach to this, and hopes for a strong commitment to respecting contract sanctity.

Acceleration of Priority Infrastructure

Agung Wiryawan

Presidential Regulation No.75/2014 on acceleration of priority infrastructure was issued on 17 July 2014 to help overcome hurdles in the provision of much needed infrastructure. Priority infrastructure specifically includes infrastructure in the power and oil & gas sectors. Funding for priority infrastructure will also be allocated from state and regional budgets, or come from PPPs, state-owned or regionally-owned enterprises or from other "legal sources of funds".

The former Policy Committee for the Acceleration of the Provision of Infrastructure (KKPPI), which had become inactive, is to be revitalized and strengthened as the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP). The membership of the KPPIP has been slimmed down from 12 to four. It is chaired by the Coordinating Minister for Economic Affairs and the members are the Minister of Finance, Minister of National Development Planning (who is also the Head of Bappenas) and Head of the National Land Agency. Its tasks and duties have also been further defined as follows:

a. to determine strategies and policies for the acceleration of Priority Infrastructure Provision;

b. to monitor and control the implementation of strategies and policies for the acceleration of Priority Infrastructure Provision;

c. to facilitate the increase in the capacity of apparatus and agencies in connection with Priority Infrastructure Provision;

d. to determine the quality standards of Pre-feasibility Studies and evaluation procedures;

e. to facilitate the preparation of Priority Infrastructure including action plans, the allocation of funds, pre-feasibility studies, funding sources and financing schemes, land acquisitions, permits and licences; and

f. to resolve issues arising from the implementation of Priority Infrastructure Provision

The KPPIP is to provide a Priority Infrastructure List each year containing the source of funds and financing schemes with the first such list to be issued by 17 January 2015 (six months after enactment of PR No.75/2014).

Export Duty rates revised based on smelter development

Tjen She Siung

On 25 July 2014 the Finance Minister issued MoF Regulation No.153/2014 as the third amendment to MoF Regulation No.75/2012 on Export Duties for minerals. Under this regulation a new set of Export Duty rates have been issued for those companies that have decided to build a smelter. These new rates are based on the progress of smelter construction and are effective from 1 August 2014 until 12 January 2017.

The Export Duty is set at:

- 7.5% for companies where smelter construction is 7.5% complete or less;
- 5% for companies where smelter construction is between 7.5% and 30% complete; and
- 0% for companies where smelter development is more than 30% complete.

As companies that do not build a smelter will still be subject to Export Duty on a progressive scale starting at 20% and increasing to 60% by the second half of 2016, this new regulation is clearly intended to encourage smelter construction.

The stage of smelter construction will be included in the export recommendation issued by the Minister of Energy and Mineral Resources, which will become the basis to impose the Export Duty.

New regulation on mine-mouth power plants

Agung Wiryawan

The Minister for Energy and Mineral Resources issued MoEMR Regulation No.10/2014 on mine mouth power plants' coal supply and price on 4 April 2014.

Under MoEMR No.10/2014 the basic coal price is to be the production cost (determined by the Director-General of Minerals and Coal) plus 25% regardless of the calorific value of the coal. Previously only coal with a calorific value of less than 3,000 kcal was allowed to be used in mine-mouth power projects. Once approved by the MoEMR, the basic coal price will be valid for the duration of the PPA with a price escalation considered each year based on the exchange rate, diesel prices, consumer price index and wages.

MoEMR 10/2014 stipulates that mine owners who supply mine-mouth power plants must have their concession listed on the Clean-and-Clear List and must have the reserve allocation and coal quality required by the power plant. It also requires that the mine owner is to own a minimum of 10% of the shares of the power plant company. This is an entirely new requirement designed to help secure the supply of coal for the project.

The new regulations will apply to the tenders for Sumsel 9 & 10 PPPs with the result that coal mines with coal higher than 3,000 kcal can now participate in the projects.

New Geothermal Law and feed-in tariffs

Toto Harsono and Andi Syarif

The Minister of Energy and Mineral Resources issued Regulation No. 17/2014 regarding geothermal tariffs on 3 June 2014. Under this regulation, the ceiling price for electricity purchased by PLN from geothermal power plants is based on three defined regions and the planned commercial operation date of the power plant.

The three regions are:
Region 1: Sumatra, Java, Bali
Region 2: Sulawesi, Kalimantan, Nusa Tenggara Timur, Nusa Tenggara Barat, Halmahera, Maluku, Papua
Region 3: Remote areas within Region 1 and Region 2 which depend on power generation from oil-fired power plants

New Geothermal Tariffs

COD	Ceiling Price (USD cents/kwh) for geothermal power projects		
	Region 1	Region 2	Region 3
2015	11.8	17.0	25.4
2016	12.2	17.6	25.8
2017	12.6	18.2	26.2
2018	13.0	18.8	26.6
2019	13.4	19.4	27.0
2020	13.8	20.0	27.4
2021	14.2	20.6	27.8
2022	14.6	21.3	28.3
2023	15.0	21.9	28.7
2024	15.5	22.6	29.2
2025	15.9	23.3	29.6

The ceiling price is the basic price at the time of the its commercial operation date. PLN is responsible for the transmission line construction and its cost.

Regulation No.17/2014 allows existing geothermal projects to renegotiate their tariffs based on the new ceiling price after the completion of exploration and feasibility studies so long as the Power Purchase Agreement (PPA) has been signed by a prescribed date, i.e. between 31 August and 31 December 2014 depending on the status of the IUP and the assignment letter from the Minister of Energy and Mineral Resources.

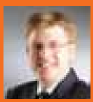
The new Geothermal Law was signed by the President on 17 September 2014. Some of the key differences between the old law and the new law are below:

Old Law	New Law
• Uses the term "Mining" in the licence - *Izin Usaha Pertambangan Panas Bumi*	• Removes the term "Mining" from the licence, as geothermal is no longer considered to be a mining activity - *Izin Panas Bumi*
• The purpose of geothermal development is to enhance economic growth and welfare	• The purpose of geothermal development is to increase the usage of renewable, clean and environmentally-friendly energy to reduce greenhouse gas emissions
• The law does not mention or use the term "Forest Area"	• Geothermal activities can be conducted in a "Forest Area" (production, protected and conservation forest areas)
• The IUP can be issued by the Central or District Governments	• The geothermal permit can be issued by: – The Central or District Governments for direct uses of geothermal (e.g. hot springs) – The Central Government only for indirect uses (i.e. electricity generation)

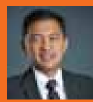
All geothermal permits (including joint operating contracts) which were issued before the issuance of the new law are still valid, but are required to begin the exploitation stage by 31 December 2014.

Contacts

Assurance


Sacha Winzenried
sacha.winzenried@id.pwc.com
T: +62 21 528 90968

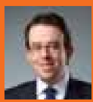

Dwi Daryoto
dwi.daryoto@id.pwc.com
T: +62 21 528 91050


Yusron Fauzan
yusron.fauzan@id.pwc.com
T: +62 21 528 91072

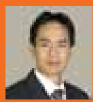

Gopinath Menon
gopinath.menon@id.pwc.com
T: +62 21 528 75772


Haryanto Sahari
haryanto.sahari@id.pwc.com
T: +62 21 528 91000


Yanto Kamarudin
yanto.kamarudin@id.pwc.com
T: +62 21 528 91053


Anthony Hodge
anthony.x.hodge@id.pwc.com
T: +62 21 528 90687

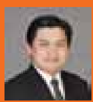

Fandy Adhitya
fandy.adhitya@id.pwc.com
T: +62 21 528 90749


Daniel Kohar
daniel.kohar@id.pwc.com
T: +62 21 528 90962


Christina Widjaja
christina.widjaja@id.pwc.com
T: +62 21 528 75433


Firman Sababalat
firman.sababalat@id.pwc.com
T: +62 21 528 90785

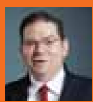

Yudhanto Aribowo
yudhanto.aribowo@id.pwc.com
T: +62 21 528 91059


Toto Harsono
toto.harsono@id.pwc.com
T: +62 21 528 91205


Dodi Putra
dodi.putra@id.pwc.com
T: +62 21 528 90347

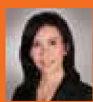
Tax


Tim Watson
tim.robert.watson@id.pwc.com
T: +62 21 528 90370


Anthony J Anderson
anthony.j.anderson@id.pwc.com
T: +62 21 528 90642


Suyanti Halim
suyanti.halim@id.pwc.com
T: +62 21 528 76004


Antonius Sanyojaya
antonius.sanyojaya@id.pwc.com
T: +62 21 528 90972


Gadis Nurhidayah
gadis.nurhidayah@id.pwc.com
T: +62 21 528 90765


Tjen She Siung
tjen.she.siung@id.pwc.com
T: +62 21 528 90520


Michelle Mianova
michelle.mianova@id.pwc.com
T: +62 21 528 75919


Alexander Lukito
alexander.lukito@id.pwc.com
T: +62 21 528 75618

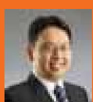
Advisory


Mirza Diran
mirza.diran@id.pwc.com
T: +62 21 521 2901


Joshua Wahyudi
joshua.r.wahyudi@id.pwc.com
T: +62 21 528 90833

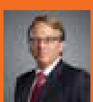

Michael Goenawan
michael.goenawan@id.pwc.com
T: +62 21 528 90340

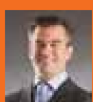

Hafidsyah Mochtar
hafidsyah.mochtar@id.pwc.com
T: +62 21 528 90774


Agung Wiryawan
agung.wiryawan@id.pwc.com
T: +62 21 528 90666


Ripa Yustisiadi
ripa.yustisiadi@id.pwc.com
T: +62 21 528 90947

Consulting


Charles Vincent
charles.vincent@id.pwc.com
T: +62 21 528 75872


Paul van der Aa
paul.vanderaa@id.pwc.com
T: +62 21 528 91091

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