

PwC Indonesia **Energy, Utilities & Mining NewsFlash**



New regulation for expiring PSCs

Daniel Kohar and Raemon Utama

On 8 May 2015, Minister of Energy and Minerals Resources Regulation No.15/2015 (MoEMR 15/2015) was issued. MoEMR 15/2015 was issued to outline further policy in this area by recognising that expiring PSCs can be “managed” by:

- a) PT Pertamina (Persero);
- b) the existing PSC contractor (via an extension); or
- c) a joint operation between the PSC contractor and PT Pertamina (Persero).

The regulation stipulates the relevant procedures and requirements for the management of expiring PSCs in each of the three scenarios.

Under MoEMR 15/2015 the evaluation and scoring process for the management of expiring PSCs will be undertaken by the Directorate General of Oil and Gas with approval given by the MoEMR.



These new provisions are stated as being designed to enhance the national interest. For example, all extended PSCs are encouraged to include a maximum 10% participating interest to be held by a regional government-owned enterprise. If Pertamina is the sole holder of an “extended” PSC then Pertamina should retain the majority of the participating interest.

Where the existing PSC contractor wishes to extend the PSC an application should be made between two and ten years before expiry (although an application can be filed earlier if an offtake contract is in place). The maximum PSC extension period is 20 years per extension. The MoEMR should approve or reject the application at least one year before the PSC expires. If no decision is made the application is deemed to be rejected.

This new regulation provides some welcome guidance to the industry on the process for requesting extensions of expiring PSCs, and more clarity on how the MoEMR will make these decisions.



DGT special tax audits

On 13 February 2015 the DGT issued Circular No. SE-09/PJ/2015 outlining certain aspects of tax collection arrangements in the context of the 2015 budget including the DGT's audit strategy. On this point, SE-09 notes an increase in the tax revenue budget from audit activities to Rp73.5 trillion being a significant increase over the 2014 budget of Rp24 trillion.

As part of this strategy, SE-09 indicates that the DGT's audits in 2015 will include 50 coal mining and oil and gas companies. SE-09 also stipulates that 51% of taxpayers registered at the Large Taxpayer Regional Office (where most of the major mining and mining services companies are registered) will be audited. Therefore mining industry players should plan for the higher probability of a tax audit in 2015.

Tax allowance for smelter investments

Raemon Utama

On 6 April 2015, Government Regulation No. 18/2015 (GR 18) was issued which came into effect on 6 May 2015. Pursuant to GR 18 the Government has updated the list of businesses eligible to apply for “tax incentives” with key targets being investors in the construction of smelters for mining products.

Overall the tax incentives covered by GR 18 continue to consist of:

- a) a reduction in taxable income of up to 30% of qualifying investment prorated at 5% over six years;
- b) accelerated depreciation and amortisation rates;
- c) a fixed withholding tax rate on dividends paid to non-residents of 10%; and
- d) an increased tax loss carry forward to a maximum of 10 years.

For the mining sector tax incentives continue to be available for:

- a) basic iron and steel manufacturing;
- b) gold and silver processing and refining;
- c) certain brass, iron ore, uranium, thorium, tin, lead, copper, aluminium, zinc, manganese and nickel processing and refining activities;
- d) coal gasification; and
- e) the use of coal for energy liquefaction.

Apart from the processing and refining of copper, silver and gold these incentives are generally still only applicable to activities undertaken outside of Java.

GR 18 sets out certain new requirements under each business sector and/or region which relate to investment value, the number of Indonesian workers and the size of the business area (although some detailed requirements are still to be determined by separate ministerial decrees – see below).

GR 18 also eliminates the following:

- the requirement for tax incentives to be available only after the taxpayer has realised at least 80% of its investment plan (at least for facilities granted from 6 May 2015);
- that new investment plans must be of at least Rp 1 trillion.

GR 18 also confirms that taxpayers who obtain these tax incentives cannot “double-dip” by accessing other tax “facilities” such as those for Integrated Economic Development Zones (*Kawasan Pengembangan Ekonomi Terpadu/KAPET*) and/or the Tax Holiday under the “Pioneer Industry” investment.

Another change is that in previous GRs only “fixed assets” investments were recognised. GR 18 however now recognises other forms of investment including for intangibles.

Implementing Regulations expected to be issued soon include those covering:

- the application procedures (from the Head of BKPM);
- various taxpayer criteria as well as requirements for designated business sectors and/or regions as listed in the attachments of GR 18.

The implementing regulations to the earlier GRs however remain valid to the extent that they are not contrary to GR 18.

Overall it appears that the Government policy is to push incentives for smelting investment into GR 18 and away from the tax holiday/pioneer industry incentive. It will be important for investors to consider the pros and cons of the various alternatives in their investment plans.

Challenges for a new era – 2015 survey of the Indonesia oil and gas industry

Daniel Kohar

PwC Indonesia has issued the seventh edition of its survey on the Indonesian oil and gas industry. The survey responses come from 95 participants from 75 companies currently operating in the Indonesian oil and gas sector and therefore can be used to draw robust conclusions about the opportunities and challenges facing the industry right now.

A summary of findings is as follows:

- a) Supply and demand for oil and gas: although fewer than in previous years the majority of respondents remain of the view that the demand for oil and gas will increase in the next five years.

Continuing the trend seen in earlier surveys respondents expect Indonesian gas demand to increase more than the demand for Indonesian oil. For the first time, some respondents in fact forecast a decline in Indonesian oil demand. The fall in the oil price has also had an effect on exploration activities with only half of those surveyed expecting their company to increase exploration activities globally in the next three years. A higher percentage of respondents (56%) said that their company will increase exploration in Indonesia but this was still down from last year's survey.

Respondents were quite optimistic about future government regulation with 40% expecting regulations to improve in terms of quality and usefulness and only 6% expecting deterioration. This question attracted extensive comments and generally confirmed an early endorsement of the new government;

- b) Employment: in a shift from the 2014 and 2012 surveys a majority of respondents believed that employment in the oil and gas industry will decrease this year. In line with comments in previous surveys, respondents commented that there is a lack of skilled local and expatriate staff in part because of better opportunities outside of Indonesia as well as the tighter controls over skilled expatriates. Just over half of the respondents expect their company to reduce their expatriate workforce with 32% also expecting a decline in the number of local hires;

- c) Capital Expenditure: capital spending is expected to slow particularly for exploration. Respondents fell broadly into three similarly sized groups – one third expecting to decrease capital expenditure, one-third to increase and one third to maintain it as it is. Participants suggested that the appetite for investment is stagnant which is at odds with the government's desire for an increase in investment in this sector;
- d) Challenges facing the industry: our survey indicated that the five most critical challenges were as follows:
 - i) the lack of consistent policies and vision between the Ministry of Finance, the Ministry of Energy and the Mineral Resources and Ministry of Industry;
 - ii) contract sanctity and clarity over PSC extensions;
 - iii) the lack of a single body to objectively resolve government disputes across the various departments and agencies;
 - iv) confusion over Law No. 22 and its implementing regulations, and the operation of GR79/2010 dealing with tax matters; and
 - v) the performance of SKK Migas.

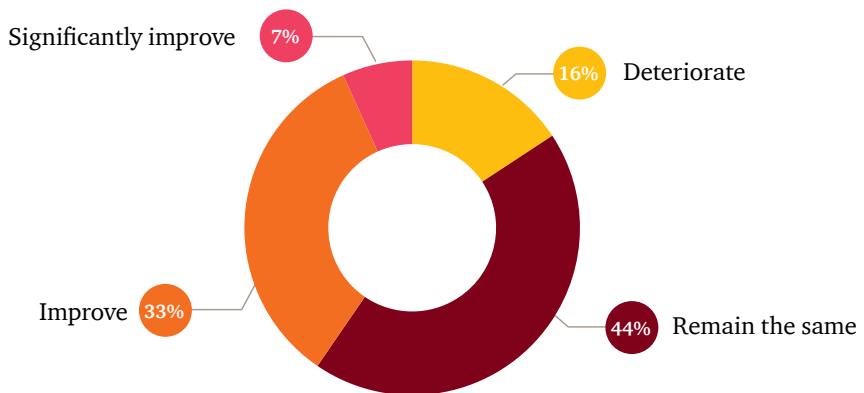
Out of the top five challenges survey participants expect contract sanctity and PSC extensions to deteriorate most over the next 12 months. They were more confident that the remaining issues would improve or, in the case of a single body to resolve government disputes, not get any worse.

Competitiveness

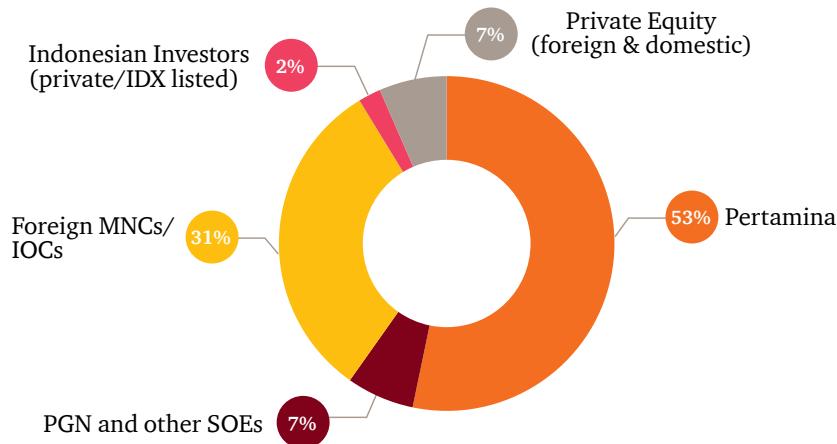
From this survey the five most competitive features of the Indonesian oil and gas industry were thought to be as follows:

- a) geological opportunities;
- b) trained workforce;
- c) ease of foreign ownership;
- d) political stability; and
- e) environmental regulation.

Over the next 12 months do you expect the quality and usefulness of government regulation in Indonesia which affects the industry to improve or deteriorate?



Who do you see being the leader in exploiting Indonesian oil and gas over the next five years?



These competitive features are largely unchanged from prior surveys. It is interesting to note however, that respondents were more optimistic about infrastructure – one of Indonesia’s (historically) least competitive features, although it does not yet feature in the top 5.

Upstream issues

In assessing participants’ views on contemporary upstream issues this year we sought to focus on:

- whether there was a need to increase exploration activity;

- how the use of natural gas as a prioritised energy source could be supported; and
- what other steps could be taken to develop Indonesia’s energy resources for domestic energy needs.

There was overwhelming recognition of the need for further harmonization of Government policy for the oil & gas sector across all relevant ministries and improved clarity on the rules and conditions for PSC extensions. The recently issued government regulation on PSC extensions (see earlier article) may help alleviate some of these concerns.

Improvements to the Public Private Partnership framework

Agung Wiryawan

On 20 March 2015 Presidential Decree No.38/2015 (PD 38/2015) on PPPs was issued to replace PD No.67/2005. PD 38/2015 was issued to address a number of concerns around the existing PPP framework. The key enhancements under PD 38/2015 are:

- a) that the sectors covered are wider and now include oil and gas infrastructure (e.g. refineries), urban infrastructure, industrial estates and social infrastructure (e.g. healthcare);
- b) that SOEs/ROEs (state and regionally owned enterprises) can act as a Government Contracting Agency (GCA);
- c) that the “bundling” of two or more PPP projects is permitted (where the projects need to be procured together e.g. a power plant and related import infrastructure);;
- d) that land will be procured by the Government (in accordance with the new Land Law) before the PPP project is offered;
- e) that a new type of contract: the “performance based annuity scheme” (to be further defined by the Ministry of Finance) is available;
- f) to encourage projects to be developed through unsolicited bids by providing compensation to the proponent of:
 - i) an additional 10% price preference in bid evaluation
 - ii) the right to match a lower price bid by a competitor
 - iii) purchasing of the intellectual property rights (e.g. the feasibility study) if the proponent loses;
- g) that Government support in the form of a cash contribution to construction costs continues to be available via the “Business Viability Guarantee Letter” and any separately available tax incentives;
- h) to provide for a Government guarantee to cover the GCA’s financial obligations;

- i) that the cost of preparing a project can include a retainer, fixed fees and success fees. The Government’s project preparation costs can be recovered from the winning bidder and can include costs for:
 - i) the pre-feasibility study
 - ii) managing the transaction
 - iii) compensation to international organisations/consultants in assisting project preparation based on a success fee;
- k) that a standard PPP agreement framework will be provided including provisions covering change mechanisms and arbitration; and
- l) that the procurement process can be through tender or direct appointment.

PD 38/2015 is a definite step forward. It creates the mechanism for performance based annuity schemes, offers a clearer framework for accepting unsolicited proposals and brings the concept of PPP into new sectors such as oil and gas infrastructure, but still does not address all the requirements to make PPP contracts bankable by the private sector.

Matters requiring further elaboration via further implementing regulations include:

- a) the mechanism of procurement (including the screening and assessment process);
- b) a standard PPP contract (including compensation in the case of termination);
- c) covering unsolicited bids;
- d) coordination amongst related agencies;
- e) harmonisation with other relevant regulations (e.g. sector specific laws and the regulation on the availability payment).

For a related discussion on the Government’s PPP strategy, please see the recent article by our infrastructure specialist Julian Smith published in the Jakarta Post on 5 May 2015 via this link - <http://www.pwc.com/id/en/media/indonesia-needs-a-ppp-strategy-build-infrastructure.jhtml>

Newsbytes



Mining in Indonesia 2015

In May 2015 PwC Indonesia launched the 7th edition of our popular Mining Investment and Taxation Guide. The guide provides a comprehensive introduction to the key regulatory and taxation issues applicable to Indonesian mining investments, including the Mining Law of 2009 and the recent implementing regulations. An essential read for new investors to Indonesia's mining sector, or a handy reference for established investors.

The 7th edition also includes the 2015 update of the PwC Indonesian Mining Areas Map.

When available, this publication can be downloaded from our website at <http://www.pwc.com/id/eum-publications>.

If you would like a hard copy, please contact Indra Jati at indra.jati@id.pwc.com or Kathy Lindsay at kathy.lindsay@id.pwc.com



Challenges for a new era

An investor survey of the Indonesian oil and gas industry

In May 2015 PwC Indonesia released its 2015 Oil and Gas Survey (see outline above). The purpose of the survey is to help inform the public and private sectors in Indonesia and abroad about Indonesia's petroleum industry and to highlight some of the challenges in attracting optimal investment and achieving its full potential. Where possible, we have compared current results with the results from prior surveys to highlight trends and to assess whether conditions are deteriorating or improving.

The survey questionnaire was sent to individuals working for more than 150 different companies. We received 95 responses (representing 75 different companies currently active in the Indonesian oil and gas sector).

When available, this publication can be downloaded from our website at <http://www.pwc.com/id/eum-publications>.

If you would like a hard copy, please contact Indra Jati at indra.jati@id.pwc.com or Kathy Lindsay at kathy.lindsay@id.pwc.com

Newsbytes



Indonesia Oil & Gas Concessions and Major Infrastructure Map 2015

PwC Indonesia has reprinted the 6th edition of the Oil and Gas in Indonesia Investment and Taxation Guide. The guide provides an extensive overview of the key regulatory and taxation issues associated with upstream and downstream oil and gas sectors, as well as the geothermal, unconventional gas and service sectors. The guide is an essential read for all stakeholders and those interested in the oil and gas sector in Indonesia.

This reprint also includes the 2015 update of the PwC Indonesia Oil & Gas Concessions and Major Infrastructure Map.

If you would like a hard copy of the map, please contact Indra Jati at indra.jati@id.pwc.com or Kathy Lindsay at kathy.lindsay@id.pwc.com



PwC Indonesia to participate in the 39th Annual IPA Convention



PwC Indonesia will be hosting a booth at the upcoming IPA Convention and Exhibition at the Jakarta Convention Center. The event, with the theme “Working Together to Accelerate Solutions in Facing Indonesia’s Energy Crisis”, will provide in-depth discussions on how to address the challenges in Indonesia’s oil & gas industry. Come stop by our booth to meet our people and pick up our latest industry publications. Our Oil & Gas Director Daniel Kohar will be presenting the Oil & Gas Survey results on Thursday 21 May.



PwC Indonesia at the 21st Coaltrans Asia 2015



PwC Indonesia will be sponsoring the lounge at the 21st Coaltrans Asia at the Bali International Convention Centre, Indonesia. Join us for one of the world's largest coal industry events to reconnect your thinking with professionals at the forefront of this industry. We will have senior members of our mining team available to discuss industry issues and PwC Indonesia Tax Partner Suyanti Halim will be presenting "An Industry Overview - Opportunities and Challenges for Indonesian Coal Investment on 8 June.



A different energy future Where energy transformation is leading us

14th PwC Global Power & Utilities Survey

On 20 May 2015 PwC released its 14th Global Power & Utilities Survey 'A different energy future'.

The PwC Global Power & Utilities Survey goes to the heart of boardroom thinking in utility companies across the globe. In this, our 14th edition, we look at the major changes facing the sector as it gets to grips with the prospect of a very different energy world ahead.

This publication can be downloaded when it is available from our website at <http://www.pwc.com/id/eum-publications>. If you would like a hard copy, please contact Indra Jati at indra.jati@id.pwc.com or Kathy Lindsay at kathy.lindsay@id.pwc.com

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