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Regulation Is Amended, Oil and Gas Contractors Obtain Tax Incentives

Indonesian Government provides several fiscal facilities for oil and gas contractors with partnership contract (KKKS), both in exploration and exploitation level—including activities of field processing, transportation, storage, and production result sales.

This incentive policy is granted under Government Regulation (PP) Number 27 Year 2017, issued on June 19, 2017. This regulation is a revision to PP Number 79 Year 2010 on Refundable Operating Expense and Income Tax Treatment in Oil and Gas Upstream Business Field.

Under the PP, Minister of Finance is authorized to give incentive based on project economical consideration from Minister of Energy and Mineral Resources (ESDM). Further, the types of fiscal facilities provided comprise:

- *Exemption of import duty on import of goods used in oil industry operation;*
- *Exemption of Value Added Tax (VAT) and Sales Tax on Luxury Goods upon:*
  a. *Acquisition of particular taxable goods and/or services;*
  b. *Import of particular taxable goods;*
  c. *Utilization of particular taxable intangible goods and/or services from outside customs area in customs area used in oil industry operation.*
- *Exemption of Income Tax Article 22 on import of goods with import duty exemption facility;*
- *Reduction on Land and Building tax of 100% from the amount stated in Notification of Tax Due (SPPT).*

However, upon other income in the form of Uplift or other similar income, Contractors are subject to final income tax of 20% (twenty percent) from revenue.

Meanwhile, the contractors' income from participating interest transfer is subject to final income tax of 5% for transfer during exploration period; or 7% for transfer during exploitation period. The taxable income after deducted by final income tax from other income or participating interest is exempted from income tax.

Profit Sharing Contract

Based on the PP, Minister of ESDM may impose dynamic profit sharing contract (PSC) pursuant to the external condition (sliding scale split). This provision is different from the previous profit sharing scheme that is fixed.

Refundable Operating Expense	Non-refundable Operating Expense
1. Exploration Expense: • Exploration drilling expense; • Development drilling expense; • Geological and geophysical research expense; • General and administrative expense: a. Administrative and financial expense; b. Staff expense; c. Material service expense; d. Transportation expense; e. Office general expense; and f. Indirect tax, local tax, and local retribution. • Depreciation expense. **2. Exploitation Expense:** • Direct expense of oil and gas production; • Expense of gas processing activity until the custody transfer point; • Utility expense: production device expense, equipment maintenance expense; and expense of steam, water, and electricity; • General and administrative expense: a. Administrative and financial expense; b. Staff expense; c. Material service expense; d. Transportation expense; e. Office general expense; and f. Indirect tax, local tax, and local retribution. • Expense of transferring gas from production point to custody transfer point; and • Expense of post-operating activities of upstream business.	a. Expense borne or incurred for personal and/or family interest of worker, management, participating interest holder, and shareholder; b. Formation or maintenance of reserve fund, except mining closure and restoration expense stored in a joint account of Special Task Force for Upstream Oil and Gas Business Activities (SKK Migas) and the Contractor in a conventional bank account of Indonesian Government located in Indonesia. c. Granted assets; d. Administrative sanction in the form of interest, fine, and increment as well as criminal sanction in the form of fine related to implementation of taxation law and billing or fine arising due to errors by the contractor, intentionally or unintentionally; e. Depreciation expense upon goods and equipment used not owned by the state; f. Incentive, pension contribution payment, and insurance premium for personal and/or family interest of expatriate worker, management, and shareholder; g. Expense of expatriate workers not complying with the Expatriate Manpower Utilization Plan (RPTKA) or not owning Expatriate Working Permit (IKTA); h. Legal consultant expense not directly related to oil industry operation in Partnership Contract; i. Tax consultant expense; j. Expense for oil and/or gas marketing for contractor, unless approved by SKK Migas; k. Entertainment expense, including reception in any name or form, except attached by the beneficiary's nominative list of and Tax ID Number (NPWP); l. Technical training expense for expatriate; m. Expenses related to merger, acquisition, or transfer of participating interest; n. Interest on loan expense; o. Income tax of personnel borne by the Contractor, except paid as tax allowance; p. Income tax that shall be withheld or collected upon independent party's income in domestic borne by the Contractor or grossed up; q. Procurement of goods and service as well as other activities not in conformity with the arm's length principle and good technical principle; r. Expenditure expense exceeding 10% (ten percent) from financial expenditure authorization value, except for particular expenses under provisions and procedure regulated by Minister; s. Surplus material not in conformity with the approved plan; t. Book value and asset operational expense that has been used and can no longer be operated due to the Contractor's negligence; u. Transaction without tender process under laws except in particular condition; or against the law; v. Bonus paid to the Government; w. Expense incurred before contract execution; x. Commercial audit expense.

Regarding the refundable operating expense in profit sharing and income tax calculation (cost recovery), the provision and the requirements do not change significantly. Further, the requirements to be fulfilled pursuant to cost recovery comprise:

- It is issued to obtain, bill, and maintain income in compliance with the law and directly related to oil industry operation activity in the Contractor's working area in Indonesia;
- It uses fair price not affected by special relationship;
- Implementation of the oil industry operation is in compliance with good business practice and engineering principles.
- Oil industry operation activity in compliance with the Work Plan and Budget approved by SKK Migas.

Upon the PSC contract executed after the issuance of PP Number 79 Year 2010, the Government gives opportunity to Contractors to adapt to the new regulation. Nevertheless, any contracts executed before the issuance of PP Number 79 Year 2010 may also refer to provisions stipulated in PP Number 2017, so far as the contract could be adjusted within 6 (six) months after the issuance of this regulation.

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