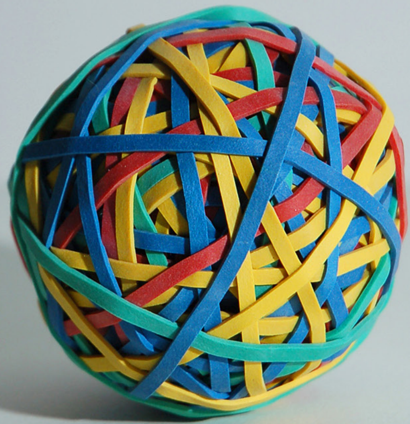
KPMG

Indonesia Regulatory Update



September 2017

Regulatory Highlights

This publication sets out to highlight at summary level, some of the key current regulatory changes in Indonesia. These important changes have implications for industry, covering a wide range of industries and within these, specific and complex business processes. For further details on any of the items covered, a listing of KPMG Contact Points for further discussion is included at the end of the document. Hyperlinks to the source documentation (Bahasa Indonesia for most items) are provided as appropriate.

Regulatory updates covered in this publication are as follows:

- The Amendment to Ministry of Energy and Natural Resources No. 8/2017 Regarding Gross Split Production Sharing Contracts
- Payment Postponement of Import and Export Duty Debt and/or Administrative Sanctions in the Form of Fine
- Basic Necessities Exempted from Value Added Tax.

Energy and Natural Resources

The Amendment to Ministry of Energy and Natural Resources No. 8/2017 regarding Gross Split Production Sharing

Ministry of Energy and Natural Resources ("MEMR") issued regulation No. 52/2017 regarding The Amendment to Ministry of Energy and Natural Resources No. 8/2017 regarding Gross Split Production Sharing Contracts ("GSPSC"). The regulation has come into effect as of 29 August 2017.

Below listed several revisions disclosed in the new regulation, which basically accommodate concerns raised by the stakeholders:

First, the minister discretion provides an additional profit sharing for uneconomic fields. The minister also does not impose limits on the amount of additional profit sharing to contractors whose economy is still below expectation. However, the minister will adjust the result when the condition improves.

Second, the government provides an additional 3% profit sharing for the Second Plan of Development ("PoD") for the same working area, which was not mentioned inside the previous rule.

Third, the regulation states about the addition on profit sharing for the production phase. According to the new regulation, the secondary production stages will get an additional of 6% profit share, slightly increase from 3% as in the previous regulation. At this stage, oil production by exerting artificial pressure into the injection reservoir of water and/or gas. During the tertiary stage, additional profit sharing reaches 10% from the previous 5% as well. At this stage, the oil production will use Enhanced Oil Recovery ("EOR") technology.

Fourth, there will be an additional share of Hydrogen Sulfide (H_2S). If the oil and gas field contain high amount of H_2S, an additional split will be given.

Fifth, additional profit sharing changes for working areas with no new frontier and petroleum support infrastructure at all. Working area is divided into two, onshore will get an additional of 4% and offshore 2%. Previously, there was no onshore and offshore distinction mentioned in the regulation.

Sixth, additional profit sharing for the progressive component of oil and gas production. If the amount of oil and gas production cumulatively fall below 30 MMBOE, an additional 10% profit sharing will be provided. Previously, less than 1 MMBOE has already provided with an additional 5% profit sharing.

Seventh, there will be a change made to the additional profit sharing on the Indonesian oil/ICP price component. Later on, the new revenue-sharing rule will increase by 11.25% from the previously 7.5%, only when the oil prices fall below US $ 40 per barrel.

Eighth, a new variable i.e. the gas price is added to the progressive component. Therefore, price of gas is now measurable as in the price of oil. Domestic Content Level ("TKDN") must be used by contractor shall be at least 30%.

On the other hand, there is no changes made to the base split component. The preliminary profit sharing rate for petroleum for the country is still 57%, while the rest belongs to the contractor. The state's share for natural gas is 52%, while the rest 48% belongs to the contractor.

(Issued regulation in Bahasa: MEMR Regulation No.52/2017)

Taxation

Payment Postponement of Import and Export Duty Debt and/or Administrative Sanctions in the Form of Fine

Ministry of Finance ("MoF") has recently issued regulation No. 122/PMK.04/2017 on Payment Postponement of Import and Export Duty Debt and/or Administrative Sanctions in the Form of Fine which revokes MoF Regulation No. 26/PMK.04/2008 on Postponement of Settlement of Underpaid Import Duty and/or Administrative Sanctions in a form of Fine and Article no. 17 to 23 within MoF Regulation No. 86/PMK.04/2016 on Export Duty Collection. The regulation has come into effective as of 6 October 2017.

Administrative sanctions are provided to those taxpayers who underpaid their import/export duty and administrative sanctions in the form of penalties to delay payment.

Two approaches are used to postpone the payment obligation of the import or export duty as follows:

- Payment rescheduling due to the insufficient import and export duty debt and/or administrative sanction in the form of fine and should be carry out based on the Imposition Letter; or
- Payment restructuring of outstanding payable import duty and/or administrative sanction in the form of fine through installment basis.

This delay or postponement is only granted through the approval given by Custom and Excise Officials, re-adjustment issued by the Director General of Custom and Excise Officials and decision issued by the relevant Director General. The new regulation added this last option merely for taxpayers with high outstanding payment or fines. Similarly, payment postponement is also given to those who face financial difficulties by providing their current financial statements and credibility report to show that they have a good financial track record, must not be listed and/or indebted to Custom and Excise authority and provide a bank guarantee or custom bond after being granted with the postponement.

Financial statements are evaluated to meet criteria as below:

- Liquidity ratio, the ratio between current assets and current liabilities shall be equal or more than 0.5 prior to last year.
- Solvency ratio, the ratio between total assets and total liabilities shall be equal or more than 0.5 prior to last year.
- Profitability ratio, the ratio between net incomes to the total shareholders' equity shall be equal or more than -2 prior to last year (applicable to positive equity value only).

To gain payment postponement, taxpayers need to provide supporting documents, such as:

- Copies of Imposition Letters.
- Pre-scheduled scheme regarding payment postponement which includes rescheduled date or installment amounts.
- Letter of Commitment to provide bank guarantees or custom bonds.
- Latest annual financial statements.
- Current annual financial statements.

Regarding the first approach mentioned previously, the maximum period of payment postponement given is 12 months after the due date given to the letter of appointment for the payment rescheduling and payment restructuring through installment. Upon the delay, interest of 2% is charged per month and obligated to be paid by the taxpayer.15 days after the completion of postponement application, Director General will decide whether to accept or reject the application submitted.

While for the second approach, payment restructuring through installments, the maximum period of payment postponement given is 24 months with a monthly charged of 2% for the interest. A copy of the application shall be submitted to the Director General of no more than 6 October 2018.

(Issued regulation in Bahasa: MoF Regulation No. 122/PMK.04/2017)

Basic Necessities Exempted from Value Added Tax

MoF recently issued regulation on Basic Necessities Exempted from Value Added Tax which revokes MoF Decree No. 653/KMK.03/2001 on the Exemption of the Import and/or Delivery of Basic Commodities from Value Added Tax and MoF Decree No. 521/KMK.1/2001 on Delivery of Basic Commodities from Value Added Tax. This regulation has come into effect as of 16 August 2017.

The regulation clarified several types of basic commodities from Value Added Tax that are highly demanded by the public as to support welfare of the community into 11 types of commodities as follows:

- Rice and Grain in the husk, hulled grain, half ground grain or fully ground grain, polished grain, cracked grain;
- Corn includes peeled or unpeeled corn, shredded corn, cracked corn, and fractions of corn coming out from grinding machine (menir) but excludes corn seeds;
- Sago, such as sago pith, coarse flour and powdered flour;
- Soybean includes skinned soy, whole and cracked soy besides soy seeds;
- Table Salt includes iodized or non-iodized salt;
- Meat such as fresh meat and poultry including frozen, salted or marinated meats;
- Eggs includes any unprocessed eggs, salted or preserved eggs;
- Milk includes pasteurized or unsweetened milk;
- Fruits includes any kind of fresh fruits besides dried fruits;
- Vegetables includes any kind of fresh/frozen vegetables;
- Tubers includes any kind of fresh tubers;
- Spices includes fresh and dried spices but not crushed;
- Sugar includes white crystalline sugar without any flavor or coloring.

Adjustment to the criteria and/or details of staple commodities is granted after getting advice from the relevant ministry.

(Issued regulation in Bahasa: [MoF Regulation No. 116/PMK.010/2017])

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