KPMG

Tax News Flash

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Upstream Oil and Gas Activities Tax Facilities and Tax Treatment Clarification for Charging Costs of Shared Facilities and Head Office Indirect Cost Allocations

The Government has provided additional guidelines with the issuance of Minister of Finance Regulation No. 122/PMK.03/2019 ("PMK-122") for tax facilities and the tax treatment for charging costs of shared facilities and claiming Head Office cost allocations, effective 25 September 2019.

Provisions stipulated in PMK-122 are applicable to Production Sharing Contracts signed both before and after the enactment of Law No. 22/2001, as well as Production Sharing Contracts signed after the enactments of Government Regulations No. 79/2010 and No. 27/2017.

Tax facilities for upstream oil and gas activities

These tax facilities are applicable for oil and gas contractors in either the exploration and/or exploitation stage (processing, transportation, storage and sale):

1. Value Added Tax ("VAT") and/or Value Added Tax and Luxury Goods Sales Tax is not collectable, if related to oil and gas activities, on:
   a. purchases of certain taxable goods/services;
   b. utilization of offshore intangible goods;
   c. utilization of certain offshore taxable services.
2. A 100% reduction of Land and Building Tax ("PBB") from the amount stated in the PBB Notification Letter ("SPPT").

How to apply for these tax facilities

The application, using the template provided in PMK-122, to obtain these tax facilities must be submitted by the Operator on behalf of the other participating interest contractors to the Head of the Regional Tax Office through the Operator's Tax Office. A Tax Facility Certificate (or "SKFP" in Bahasa) must be issued by the Tax Office no later than 7 working days after the submission of a complete application. This tax facility is carried out by the Head of the Regional Tax Office on behalf of the Minister of Finance.

For contractors in the exploitation stage, these tax facilities are only provided to contractors which cannot reach the internal rate of return indicated by the project economic considerations in the specific period indicated in its Production Sharing Contract and has a working area:

1. located in the deep sea;
2. having a potential hydrocarbon reservoir with the following characteristics:
    a. high pressure;
    b. high temperatures; and/or
    c. high impurities of carbon dioxide (CO_2) and/or hydrogen sulfide (H_2S).
3. located in an area where the existence of oil and gas supporting infrastructures are:
    a. still limited;
    b. located offshore with no supporting infrastructures available; or
    c. located onshore with no supporting infrastructures available.
4. having secondary and tertiary field development; and/or
5. requiring unconventional field development.

Tax Treatments of Charging Shared/Joint Facilities Costs (Cost Sharing)

PMK-122 states that post GR 27/2017 charges for operating costs of joint facilities by a contractor, in the context of utilizing government-owned goods in upstream oil and gas activities, are exempt from withholding tax obligations. It also states that the services related to joint facilities are excluded from VAT imposition.

These tax treatments are specifically for:

1. goods used and/or obtained and/or purchased by a contractor in relation to a Production Sharing Contract which are State property;
2. the utilization of State property used as a joint facility which has obtained SKK Migas approval; and
3. the utilization of the shared facilities is not intended to generate a profit.

Indirect Cost Allocation Expenditure of The Head Office

PMK-122 also states that head office cost allocations occurring post GR27/2017 are not subject to withholding tax and VAT as long as these charges are:

1. used to support businesses or activities in Indonesia;
2. the contractor has submitted audited consolidated financial statements of the head office;
3. the contractor has submitted the basis for the cost allocations; and
4. such amount does not exceed the limit set by the Minister of Finance in Regulation No. 256/PMK.011/2011 for indirect costs that can be allocated by a head office and used in the calculation of profit sharing and income tax under a Production Sharing Contract.

KPMG Comment:

PMK-122 is the latest effort of the Government to make the upstream oil and gas industry more attractive to investors and contractors. We understand that additional incentives are being considered, but when they will be finalized is unclear.

The tax facilities should provide a positive cash flow impact for exploration contractors and qualifying exploitation contractors.

The tax treatment clarifications should result in reducing the time and effort required to deal with the Tax Office during tax audits as well as challenging Tax Office related assessments that have been frequent in the past.

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