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KPMG Advisory Indonesia

Reimbursement Procedures for VAT and Sales Tax on Luxury Goods for Upstream Oil and Gas Companies

Under the "assume and discharge" article of Production Sharing Contracts ("PSCs") signed before the December 2010 effective date of PP-79/2010 (regarding "Refundable Operational Costs and Income Tax Treatment for Upstream Oil and Gas Companies"), a PSC Contractor has the right to obtain reimbursement of Value Added Tax ("VAT") and Luxury Goods Tax ("Indirect Taxes") that it has paid.

To establish the requirements and procedures for this reimbursement, the Minister of Finance has issued regulation No. 218/PMK.02/2014 ("PMK-218/2014") which replaces regulation No. 64/PMK.02/2005 ("PMK-64/2005") and is now effective.

There are requirements included in this regulation that a PSC Contractor must meet to obtain reimbursement:

- The Contractor must have paid the Government entitlement based on its PSC and it must have been received by the State Treasury, and
- The PSC Contractor must have obtained fiscal clearance (surat keterangan fiskal) from the Director General of Tax ("DGT").

Unlike PMK-64/2005, under which the Implementing Agency, currently SKK Migas, obtained payment verifications from the banks where the Indirect Taxes were remitted, under the new regulation, SKK Migas must obtain confirmation from the DGT, through the Tax Offices where the PSC Contractor is registered (normally the Oil and Gas Tax Office).

SKK Migas also must now obtain confirmation from the Tax Offices where the PSC's vendors issuing the VAT invoices are registered.

The DGT must provide its response to a SKK Migas confirmation request within 20 working days after receiving it. This time frame can be extended for another five working days by a written notification from the DGT.

The amount of Indirect Taxes to be reimbursed depends upon this confirmation process and cannot exceed the Government entitlement, excluding the First Tranche Petroleum received by the Government.

PSC Contractors can expect to receive reimbursements less than the claimed amounts for any or a combination of the following reasons:

- Lack of confirmation from the DGT;
- The previous period VAT reimbursement was over-refunded;
- The Contractors' Over-Lifting amount becomes due and payable, and
- The VAT claimed is not reimbursable, such as:
  - > VAT paid on the importation and/or delivery of taxable goods and services that are exempted from VAT by laws and regulations;
  - > VAT on operating costs of a Liquefied Natural Gas refinery, and
  - > VAT on expenses which, by nature, are non-deductible based on the prevailing regulations.

In addition to SKK Migas and the DGT, there are other departments within the Ministry of Finance that are involved in this reimbursement process, such as the State Budget and the State Treasury, as well as the Central Bank.

KPMG Notes

It is advisable that PSC Contractors verify that their vendors have properly reported the VAT Invoices in their VAT returns.

The new guidelines provide more certainty in claiming VAT and Sales Tax on Luxury Goods paid, but the process may be challenging.

There are risks that the DGT will not confirm the correct amounts of Indirect Taxes and there is no mechanism provided for PSC Contractors to communicate with the DGT regarding any discrepancies between the amounts claimed and the amounts confirmed by the DGT.

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