

PETRO TAX NOTES



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Full Deduction of Subsurface LBT during Exploration Phase (PMK-267/PMK.011/2015, 31 December 2014)

WHAT HAPPENS?

On December 31, 2014, Ministry of Finance (MoF) has issued a favorable LBT regulation for upstream oil & gas industry providing a full deduction of Subsurface Land and Building Taxes (LBT) during exploration phase. The abatement is governed under MoF Regulation No. 267/PMK.011/2014 (PMK-267).

PMK-267 is the Government's response to the controversy of exploration LBT imposition for the PSC signed post GR-79/2010 (GR-79). This incentive is intended to solve one of exploration problems in order to accelerate exploration activities.

THE LBT INCENTIVE

LBT incentive is limited to subsurface LBT for PSC Companies who are in exploration period. Government provides 100% deduction on subsurface LBT during exploration phase. Deduction will begin to be given for 2015 LBT Payable Notification Letter (SPPT PBB). Tax Office will raise SPPT PBB with the deduction amount stated on it as the evidence that the deduction has been granted

Who are eligible?

PSC Contractors who have the contract signed after commencement of GR-79 and have been filed LBT Returns are eligible to utilize the facility. In addition, a recommendation letter from Minister of Energy and Mineral Resources (MoEMR) also required proving the PSCs are in exploration stage.

Duration

Deduction will be given every year for 6 years exploration periods. An extension may be granted maximum up to 4 years, based on MoEMR recommendation stating that the PSC is on exploration phase. It is mean that PSC Company may waive payment of subsurface LBT for 10 years, as per normal exploration period in Indonesia PSC system. After 10 years exploration periods, PSC must pay the subsurface LBT.

Enforce A Observations

PMK-267 limit subsurface LBT facility to maximum 10 years based on the normal 10 years exploration phase assumption. In term of tax, exploitation phase is started on the date of POD approval which may beyond the duration of normal 10 years exploration phase. PMK-267 doesn't provide further guidance on availability of the incentive in a specific situation above, in the case of discovery written acknowledgement or approval for proposed POD have not been issued while 10 years normal time is over. Period before approval of POD should be constituted as exploration phase but the LBT facility limited maximum 10 years.

Since the POD approval date, PSC is no longer enjoys the incentive, eventhough there is no production in that period. Subsurface LBT is payable during facility development period or may in relinquishment or termination preparation period due to end or discontinued PSC.

LBT Obligation for PSC Contractors

In the period before GR-79 is implemented, PSC contractors are released from LBT payment obligation as per assume and discharge clause in the PSC. Currently, LBT is becoming a strategic issue as the result of implementation of GR-79 in which LBT is treated as joint cost between Government and PSC Contractors. Contractors are obliged to make payment first and later will be recovered through cost recovery mechanism. The changes in LBT regime has become a financial burden for newer PSC that granted after GR-79.

Oil & Gas LBT is mainly regulated under MoF Regulation (PMK) No.76/PMK.03/2013 and DGT Regulation (PER) No.45/PJ./2013. LBT is an official assessment tax which is assessed by Tax Officer based on data (LBT Tax Return) filed by PSC Contractors reflecting the situation at the beginning of respective fiscal year.

Procedure for LBT Audit and Verification

PMK-256/PMK.03/2014 dated 30 December 2014

Government recently issued MoF Regulation, PMK No.256/PMK.03/2014 concerning Procedure for LBT Tax Audit and Tax Verification. The Regulation governs procedure, right and obligation, and tax audit or verification provision for the LBT obligation. Accordance to LBT Law, DGT has authority to conduct tax audit to test compliance or tax audit for other purposes. Tax Verification is done on "other information" which may belong to DGT or obtained by DGT from other party related to the tax payer compliance.

LBT AUDIT

Tax Audit for compliance testing may cover one or several fiscal years for the ongoing fiscal year and/or previous fiscal years. Tax Audit for other purposes is conducted on the matters of object valuation, assessment, matching, and/or gathering data related to the tax audit.

Tax Audit in respect of testing of Tax Payer Compliance is conducted for below cases:

1. An indication that LBT Payable according to Risk Analysis is higher than LBT Payable is calculated in LBT Tax Returns (SPOP)
2. Tax Payer did not file or submit LBT Tax Returns (SPOP) as required by LBT Law Article 10 (a).
3. LBT Verification is discontinued and proposed to a Tax Audit based on LBT Risk Analysis, or
4. There is new data that did not reported or disclosed in any LBT audit or verification previously

LBT Audit is conducted based on DGT Standard of Audit.

DURATION OF LBT AUDIT

Duration time for LBT Audit consists of 1).Testing Duration and 2).Closing Conference and Audit Reporting. For compliance testing audit, testing duration will take 4 months and subject to one time extension for maximum 2 months. Closing conference and reporting will take 2 months counted since Audit Findings Notification sent to Tax Payer. In total, normally LBT Audit will be

finished in 6-8 months except for audit in regards of Oil & Gas LBT.

Oil & Gas LBT Audit may take longer than normal duration since the Regulation allows maximum 3 times extension (2 months for each extension). In total, Oil & Gas LBT audit may be finished in 6-12 months.

LBT VERIFICATION

Verification is conducted in the case of:

1. Availability of other information in which amount of LBT payable can be calculated (in case tax payer did not file SPOP) or a higher LBT is payable compare to what has been paid and reported by the tax payer.
2. Tax Payer submit a LBT refund, which may happen due to:
 - a. Over payment of LBT payable as stated in Tax Assessment Due (SPPT), Tax Audit Assessment (SKP) or Tax Collection Letter (SKP).
 - b. Double LBT payment
 - c. Administration mistake, typo error on Tax Payment Slip (SSP) or other administration forms.

LBT Verification for other information normally finished in 2 months. LBT Verification for LBT refund application will be concluded accordance to the regulation that governs the procedure of LBT Refund (PMK-17/PMK.03/2011). Refer to PMK-17/2011, verification of LBT refund application will take maximum 12 months since the application is submitted.

Enforce A Note

Procedure for LBT Audit basically follows the general tax audit procedure. There is requirement to submit document, data, or electronic data within 1 month of request letter.

Tax Payer should understand its rights and obligations in a tax audit which may include receive notification of Audit Findings, Attend the closing conference, and request Quality Assurance Team discussion when necessary

Procedure for VAT Reimbursement – New Regulation

PMK-218/PMK.02/2014 dated 5 December 2014

A new regulation providing procedure for VAT Reimbursement has been issued in December 5, 2014 and effective since February 3, 2015 (60 days since issuance date). PMK-218/2014 is replacing previous regulation PMK-64/2005. Significant changes are introduced in the new regulation. VAT Reimbursement is only applicable to PSC that granted before commencement of GR-79/2010

WHO IS ELIGIBLE? HOW MUCH?

PSC Contractors who operates the working area (Operators) have rights for VAT reimbursement that has been paid in acquisition of goods or utilization of services. Reimbursement can be executed when Government revenue/share has been received in Government bank account, maximum at the amount received by Government excluded FTP revenue. Government revenue (exclude FTP) will be the threshold of reimbursement amount.

In previous Regulation (PMK-64/2005), there was no requirement that Government revenue must be received first in Government bank account before reimbursement can be executed. FTP was included in the amount for the reimbursement threshold.

NON REIMBURSABLE ITEMS

PSC Operator may reimburse all the VAT and/or Sales Tax on Luxury Goods that have been paid to State Treasury, except VAT for below expenditures:

1. Exempted VAT on importation and other goods/services transaction as per VAT Law,
2. VAT on operational of LNG refinery, as the further process of natural gas up to the sales
3. VAT on procurement of goods/services which are non-cost recoverable as per applicable laws.

It is clear that VAT paid on non-cost recovery items won't be reimbursed as well as VAT paid on purchasing goods or services in which the VAT is exempted. But the PMK doesn't clarify treatment of VAT paid due to un-executable VAT facility

DOCUMENT REQUIREMENT

For VAT that collected by the PSC Operators, application must be accompanied by:

1. Original or copy of Tax Payment Slip (SSP) with the NTPN. NTB/NTP on it, or copy of electronic SSP with the bank stamp and signature; and
2. State Revenue Confirmation Letter from local State Treasury Office for non-Billing System payment; and
3. Original of Tax Clearance Letter (SKF)

Document must be attached for VAT that is not collected by PSC Operators:

1. Original of VAT Invoice or the other document treated the same to VAT Invoice; and
2. Original of Tax Clearance Letter (SKF)

REIMBURSEMENT PROCEDURE

- PSC Operator submits a VAT Reimbursement application to SKK Migas.
- SKK Migas will run verification, including confirmation of VAT Invoice (Faktur Pajak) to DGT or related tax office
- Tax Office will provide confirmation within 20 days. SKK Migas will reimburse the VAT, maximum as per confirmation result.
- SKK Migas submit a reimbursement request to Directorate General of Budget (DG Budget)
- DG Budget sends a payment request to DG Treasury to make payment of the approved amount.
- DG Treasury instructs Bank Indonesia to Debit Government account and transfer to PSC Operator account.

PMK-218 allows SKK Migas to compensate the reimbursement with previous reimbursement overpayment or over lifting due by PSC Operator. Although PMK-218 has described the procedure but it doesn't clearly stipulate how long it will take to have the money in PSC Operator bank account as well as the consequences for late reimbursement?

For further discussion of your VAT Reimbursement concerns and services assistance, please feel free to contact us

Important Reporting Date

Date	Reporting Obligation	Remarks
31 March 2015	Latest Submission of Individual Annual Income Tax Return 2014 (SPT Form 1770SS/1770S/1770)	Forms refer to : DGT Regulation (PER) No.19/PJ./2014 dated July 3, 2014
30 April 2015	Latest Submission of State Revenue Calculation Report – 2014 Final Calculation	Refer to PMK-79/PMK.02/2012
30 April 2015	Latest Submission of Corporate Income Tax Return 2014 (SPT Form 1771/1771\$ 2014)	Form 1771/1771\$ for Upstream Oil & Gas refer to PER-05/PJ/2014. A general form completed with: <ol style="list-style-type: none"> 1. Special Attachment Calculation of Corporate Income Tax in respect of the PSC (Form 9A-1 or 9B-1) 2. Special Attachment Calculation of Branch Profit Tax or Dividend Tax (Form 9A-2 or 9B-2) 3. Special Attachment Details of Exploration Cost for PSC exploration phase or Details of Exploitation Cost for PSC producing phase (Form 9A-3/9B-3 and/or Form 9A-4/9B-4) 4. Special Attachment Schedule of Depreciation in regards of PSC (Form 9A-5 or 9B-5) 5. Special Attachment Contractor FTP Share Report (Form 9A-6 or 9B-6) 6. Special Attachment Changes in Participating Interest Report (Form 9A-7 or 9B-7)

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About Us

Enforce A is a national tax consultant who is focusing on providing tax advisory to upstream oil & gas industry, coal & mining, as well as financial services industry. Our services cover day to day tax advisory, strategic tax planning, tax due diligence, compliance services, tax function outsourcing, tax audit, tax objection and litigation, tax refund, International Tax and Transfer Pricing documentation. Supported by experienced team with related industrial background, we understand client business better and able to deliver solutions right to the heart of the problem. Our government officer experiences and litigation will complete our view in providing comprehensive and practical solutions to our client.

Please feel free to contact us for further discussion or inquiries:

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