



## Indonesia Tax Info

### Income Tax Treatment in the Upstream Oil and Gas Business for Gross Split PSC

In relation to Minister of Energy and Mineral Resources Regulations number 8 and 52 of 2017 regarding Gross Split Production Sharing Contracts ("Gross Split PSC"), the Government of the Republic of Indonesia has finally stipulated the Income Tax Treatment for Gross Split PSC through Government Regulation number 53 of 2017 ("GR-53") issued on 27 December 2017. Many of the articles in GR-53 are similar to the recent updates on the Income Tax Treatment for Cost Recovery PSC regulated under Government Regulation number 27 of 2017 ("GR-27", please see our Tax Info, August 2017 edition) with the necessary modifications for the Gross Split concept.

A summary of some salient points stipulated in GR-53 is as follows:

1. The gross income of the contractor consists of:
  - a. Income from the oil and gas production sharing, calculated based on the contractor's share of the production, less Domestic Market Obligation ("DMO") plus the DMO Fee, and then increased/reduced by the lifting price variance.
  - b. Other income including those received from Uplift, transfer of Participating Interest, and sale of by-products from upstream activities.
2. Taxable income is computed based on the gross income and other income (from sale of by-products and other sales) less the deductible expenses as stipulated in GR-53. In addition, the applicable tax loss carry forward for a Gross Split PSC is maximum 10 years (not unlimited as in the cost recovery PSC).
3. The definition of operating costs for tax purposes includes exploration costs, exploitation costs, and other costs. The details of operating costs are similar to the details of operating costs as defined in GR-27. Further, the list of non-deductible expenses is also quite similar to the list of non-cost-recoverable expenses as regulated in GR-27, with several expenses that may be considered as deductible expense, i.e. tax consultant, marketing, and commercial audit expenses.

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4. Income received from Uplift and Transfer of Participating Interest is subject to 20% and 5%/7% of the gross amount, respectively. Taxable income after deduction of final income tax on uplift and transfer of participating interest shall not be subject to further income tax (this may be interpreted as not further subject to Branch Profit Tax). Separately, in relation to the participating interest transfer transaction, GR-53 also mandates that the Contractor shall report the value of the transaction not only to the DGT but also to the Directorate General of Oil and Gas.
5. The applicable tax incentives for Gross Split also mirror the tax incentives for Cost Recovery PSC, with the general breakdown of categories as follows:
  - a. Tax incentives during exploration and exploitation stage
  - b. Sharing Facilities
  - c. Parent Company Overhead (PCO) Allocation that is not subject to withholding tax and VAT.

GR-53 is effective as of 28 December 2017.

## **Treatment on the Issuance and/or Usage of Invalid Tax Invoice**

The Director General of Tax ("DGT") has issued Regulation number PER-19/PJ/2017 ("PER-19") to prevent and stop further losses to State Revenue due to the issuance and or/usage of invalid Tax Invoices. An invalid Tax Invoice is defined as a tax invoice that is not issued in accordance with the actual transaction and/or a tax invoice issued by a Non-Taxable Entrepreneur.

A Taxpayer that has been indicated as issuing an invalid Tax Invoice, based on certain verification, analysis, or evidence obtained by the tax office, may have its Electronic Certificate suspended by the DGT and therefore cannot issue Tax Invoices. In determining the suspension, the following criteria will be verified;

1. The validity of the identity documents of the Taxpayer, the management and/or person in charge.
2. The existence of the Taxpayer, the management and/or person in charge and the conformity and the properness of their profile;
3. The existence and the properness of the Taxpayer's business location; and
4. The conformity of the Taxpayer's business activity.

To lift the suspension, the Taxpayer shall submit a clarification letter to the Director of Tax Intelligence (DTI) within 30 calendar days from the date the suspension status is imposed by the DGT. Failure to submit such letter timely will result in permanent revocation of the Taxpayer's electronic certificate.

The DTI, on behalf of the DGT, shall follow up the clarification letter within 30 days and issue a decision letter to cancel the suspension or inform the Taxpayer if the clarification is not acceptable.

Any Tax Invoice deemed as invalid cannot be credited by its recipient, nor it can be expensed. PER-19 was stipulated and came into force on 8 November 2017.

## **Procedures for Preparation and Reporting of Electronic Tax Invoices**

The DGT has issued Regulation No. PER-31/PJ/2017 ("PER-31") dated 29 December 2017 as a second amendment to DGT Regulation No. PER-16/PJ/2014 concerning Preparation and Reporting of Electronic Tax Invoices ("e-Faktur").

PER-31 specifies the types of application or electronic system available, i.e. Client Desktop e-Faktur application, Web Based e-Faktur application, and Host-to-Host (H2H) e-Faktur application. The H2H e-Faktur application can be used by a Taxable Entrepreneur that issues e-Faktur or through a H2H e-Faktur Operator.

Effective 1 April 2018, the seller is required to disclose the name and address as stated in the Identity Card (KTP) or Passport of the buyer, if the buyer's Tax ID Number is not available. For a foreign buyer, the Tax ID Number shall be filled in with 00.000.000.0-000-000 and the Identity Number (NIK) or Passport Number of the foreign buyer must be stated.

## **Update on Tax Amnesty**

### Reporting Undisclosed Net Assets after Tax Amnesty

The DGT has issued Regulation number PER-23/PJ/2017 which came into effect as of 20 November 2017, to allow Taxpayers that have or have not participated in the tax amnesty program to report their undisclosed assets by submitting a Periodic Final Income Tax Return. The Final Income Tax rate applicable is 25% for a Corporation, 30% for an Individual, and 12.5% for certain taxpayers.

The Final Income Tax Return must be submitted subject to the following formal procedures:

- Use only the prescribed form as set out in the attachment to the regulation;
- Must be signed by the individual Taxpayer and cannot be delegated to a proxy; for a corporate Taxpayer, signed by the President Director or a proxy;
- Must be submitted to the Tax Service Office where the Taxpayer is registered;
- Must be supported by proper documents i.e. evidence of tax payment, list of the undisclosed assets and proof of value, etc.

The Tax Office where the Taxpayer is registered may verify the correctness of the calculation and the tax payment and the conformity of the supporting documents. The disclosed assets are treated as new net assets in accordance with the date of the submission of the Final Income Tax Return.

### Guidelines on Legalization of Tax Amnesty Approval Letters

The other update is in regard to Taxpayers' requests for legalization of Tax Amnesty Approval Letters. For this legalization purpose, a Taxpayer must submit photocopies of the Tax Amnesty Approval Letter to the Integrated Service Unit and to the Account Representative at Supervision and Consultation Section I. This process must be completed by the tax officer within one business day from receipt of the request. Details of the process can be referred to in DGT Circular number SE-35/PJ/2017, which came into effect on 27 November 2017.

## **Updates on VAT and LGST on Delivery of Taxable Goods and/or Taxable Services from or to Free Zones**

The Minister of Finance ("MoF") has issued Regulation number 171/PMK.03/2017 ("PMK-171") to amend MoF Regulation No. 62/PMK.03/2012 ("PMK-62") with regard to VAT and/or Luxury Goods Sales Tax ("LGST") on the movement and/or delivery of taxable goods and/or taxable services from or to Free Zones.

The salient points of PMK-171 are as follows:

1. Certain types of machinery and equipment for production purposes and for infrastructure projects are exempted from VAT and LGST.
2. Delivery of Taxable Services from other places in the Customs Territory into a Free Zone is subject to 10% VAT if conducted by a Taxable Entrepreneur residing or domiciled in the Customs Territory. Similarly, the delivery of Taxable Services from a Bonded Zone or Special Economic Zone (SEZ) into a Free Zone is subject to VAT if conducted by a Taxable Entrepreneur residing or domiciled in the Bonded Zone or SEZ.
3. An additional requirement for obtaining the facility of VAT and LGST not collected, i.e. the purchaser of the goods is an entrepreneur that has obtained a business license from the Free Zone Authority.
4. The DGT will conduct its verification electronically if the DGT has the electronic data and manually if the DGT does not have the required electronic data. If the DGT conducts manual verification, the Taxpayer is required to submit an additional document, namely a copy of the Goods Release Approval Letter ("SPPB"). All of the documents (previously listed in PMK-62) and this additional document should be submitted within seven days from the issuance of the SPPB.
5. Physical inspection for the purpose of granting this tax facility will be conducted by the DGT and the Directorate General of Customs and Excise.

PMK-171 was stipulated on 23 December 2017 and will come into force 30 (thirty) days after the stipulation date.

# Contact Persons

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