Global Energy, Utilities & Mining Group/ **June 2012 / No. 45**

Energy, Utilities & Mining
NewsFlash

New "State Revenue" Reporting Obligations for PSC Entities MoF Regulation No.79/PMK.02/2012

Tim Watson / Alexander Lukito

On 24 May 2012, the Minister of Finance ("MoF") issued PMK 79 as a further implementing regulation to Government Regulation No. 79/2010 ("GR 79"). PMK 79 outlines updated procedures for remitting and reporting "State Revenue" arising from PSC activities.

The following high level points are noted:

a) most of the terms used in PMK 79 are consistent with GR 79. New terms however cover "over-lifting" and "under-lifting";

b) State Revenue is formally defined as Government Share and the Corporate and Branch Profit Tax (i.e. the so-called "C&D Tax");

__PwC comment__:- the contractor obligation to report Government Share is new.

c) final liftings are to be calculated at year end with detailed procedures on how to settle over/under liftings to be separately regulated;

d) Income Tax for PSC contractors consists of the monthly and annual C&D Tax;

e) if requested, the C&D Tax must be paid "in-kind" based on the Indonesian Crude Price (for oil) or the weighted average price (for gas) of the month when the tax is due;

__PwC comment__:- the possibility of tax being paid in-kind is not altogether new although detail on the calculation/value mechanism probably is.

f) updated C&D Tax payment procedures are:

<u>for cash payments</u>

i) tax is to be remitted in USD to MoF account #600.000411980 at Bank of Indonesia

__PwC comment:__ this is the existing account for C&D Tax remittances.

ii) the monthly and annual C&D Tax payment deadlines are the 15th of the following month and the end of the 4th month following year end, respectively. Where the payment deadline falls on a public holiday the deadline will be the following working day.

__PwC comment:__ the C&D Tax dates are unchanged.

The C&D Tax due date seems to be determined by the date when cash is physically received into the MoF account which is different to the general tax rules (which is when the taxpayer initiates payment). This less conservative approach is however consistent with historical practice for PSC entities.

iii) a tax payment slip ("SSP Migas") for the C&D tax is to be completed.

__PwC comment:__ the SSP obligation is new although Directorate General of Taxation ("DGT") Regulation No.25/PJ/2011 already provides different tax payment codes for Petroleum Income Tax, Natural Gas Income Tax and Branch Profit Tax. This could mean that one C&D Tax payment will require 3 separate SSPs.

<u>for in-kind payments</u>

i) the payment deadlines are the same as for cash payments;

ii) contractors and BP Migas will record the in-kind payments in a "minutes of in-kind hand-over" (*berita acara serah terima*) form to be signed by both parties;

iii) the SSP shall be completed based on the "minutes of in-kind hand-over" including the hand-over date.

__PwC comment__: as indicated the mechanism outlining how to pay the tax in-kind is new and, to our knowledge, untested.

g) where C&D Tax is overpaid the overpayment should be settled in accordance with the prevailing tax laws;

__PwC comment:__ this process is new and could mean that tax refunds would be subject to a tax audit. The historical practice has been that PSC entities simply offset overpayments against future C&D Tax instalments. <u>This new process may result in delays in refunds and cash flow issues in the event of an overpayment.</u>

h) C&D Tax reporting procedures are:

i) the operator (and any non-operators) are to prepare monthly and annual State Revenue "Reports" using the template provided in Attachment II of PMK 79. The Reports should be submitted to:

- the Director General of Budgets ("DGB") c.q. Directorate of Non-Tax State Revenue;
- the Director General of Tax ("DGT"), at the office where the operator and non-operators are registered (which will generally be Badora II); and

- BP Migas.

The State Revenue Reports will constitute the monthly C&D Tax return (for monthly reporting) and constitute an Attachment to the annual Corporate Income Tax Return (for annual reporting).

***PwC comment**: these Reports are new and appear to replace the traditional "Form 7.1 and 7.2" for monthly filings.*

PMK 79 is silent on reporting obligations during exploration (i.e. where no State Revenue obligation should exist). It would not seem however that exploration PSCs are exempted and so they would presumably file nil Reports.

ii) non-operators are required to complete the State Revenue Reports based on the operator's data.

***PwC comment**: given the filing deadline for operators and non-operators is the same, this will require effective coordination between the parties to ensure timeliness.*

iii) the monthly and annual State Revenue Report filing deadlines are the 20th of the following month and the end of the 4th month following year end, respectively. Where these dates fall on a public holiday the deadline will be the following working day;

iv) the State Revenue Reports should attach the relevant SSP and payment evidence. This will be the transfer evidence (for cash payments) or the "minutes of in-kind hand-over" (for in-kind payments);

i) there will be coordination between DGB and DGT in monitoring the C&D Tax payments; and

j) any late payment or reporting will be subject to administrative sanctions under the prevailing tax laws.

***PwC comment**: the State Revenue Reports also require the declaration of Government Share and (as outlined above) extend the reporting obligations to the DGB, the DGT and BP Migas (historical filing obligations which were (technically) to the DGT only). These enhanced obligations are obviously new and are arguably outside of a taxpayer's ordinary obligations under the tax law. It remains to be seen if this will create a concern in practice.*

PMK-79 will be effective within 60 days of enactment meaning that PSC entities are likely to have to comply for the purposes of the July 2012 C&D Tax payment and reporting cycle.

***PwC comment**: overall PMK 79 represents a significant revamp of the compliance obligations of PSC entities. The revamp is largely systematic but could have a cash flow impact as well (e.g. for tax overpayments). The overall impact should be considered immediately.*

Indonesia finalises its "tax" on the export of 21 raw minerals/ores

Tim Watson / Ali Mardi / Sammy Shihab

In our May 2012 Energy, Utilities and Mining NewsFlash (issue No.44) we mentioned the impending in-country processing requirements and the proposal to levy an Export Duty on the export of certain raw minerals and ores.

The Export Duty has since come to fruition with the issuance of MoF Regulation No.75/ PMK.011/2012 ("*PMK 75*") which levies an Export Duty of 20% on 21 prescribed raw minerals and ores (as well as applying to the export of certain non-metals, forestry and plantation products which are not discussed here).

Background

Under Mining Law No. 4/2009 and Regulation No.7/2012 ("*PerMen 7*") issued on 6 February 2012, holders of Mining Business Licences ("IUPs") and Special Mining Business Licences ("IUPKs") are required to carry out in-country processing according to the following timetable:

Phase of operations	Deadline
• Exploration IUP holders • Exploration/Feasibility phase CoWs	6 February 2015
• Production IUP holders undertaking construction • Construction phase CoWs	6 February 2016
• Production IUPs in production • Production phase CoWs	14 January 2014

PerMen 7 also sought to ban the export of raw minerals and ores with effect from 6 May 2012. Given the short lead time, *PerMen 7* was a cause of considerable concern in the mining industry. The export ban under *PerMen 7* was tempered on 7 May 2012 when the Ministry of Trade ("MoT") issued *Decree 29* on mining export guidelines. *Decree 29* essentially permits the continued export of raw minerals and ores provided that the mining company registers as an exporter and obtains export approval from the MoT.

One of the criteria for MoT approval is an export "recommendation" from the Director General of Minerals and Coal ("DGMoC"). DGMoC Regulation No. 574.K/30/DJB/2012 dated 11 May 2012 outlines the requirements. In summary the recommendation may be granted to Operational Production IUP holders if the following conditions are met:

a) "Clean and Clear" IUP status

   ***PwC comment**: we understand that currently around 10,300 coal and minerals IUPs have been issued but only around 41% have obtained the Clean and Clear status;*

b) the IUP holder has signed an Integrity Pact

   ***PwC comment**: under this document, the IUP holder is required to state that it will construct a processing plant or enter into a processing joint venture by 12 January 2014, comply with the minerals export rules, prioritise the domestic market, pay Export Duty, comply with tax and non-tax state revenue rules, and conserve the environment;*

c) hold a signed MoU with another IUP company in relation to the establishment of a processing joint venture;
d) provide a work plan for the construction of the processing facilities;
e) provide a copy of its relevant mineral sales' contracts;
f) provide a copy of its Tax ID number and Company Registration.

Export Duty-PMK 75

The GoI's authority to tax the export of minerals and ores is set out at Article 11A (7) of Law Number 10/1995 on Customs as amended by Law Number 17/2006.

PMK 75 thereby specifies an Export Duty of 20% of the "export price" of certain ores and minerals, the most significant of which are listed below:

MINERAL / ORE	
Unroasted iron pyrite	**Lead ore**
Non-agglomerated iron ore	**Zinc ore**
Agglomerated iron ore	**Chromium ore**
Roasted iron pyrite	**Titanium ore**
Manganese ore	**Zirconium ore**
Copper ore	**Silver ore**
Nickel ore	**Gold ore**
Cobalt ore	**Platinum metals group**
Aluminum ore	

PwC comment:*PMK 75 does not extend the Export Duty to coal or hydrocarbons. Government policy in relation to the inclusion of coal is understood to be under review.*

PMK 75 does not provide benchmark pricing guidelines for minerals or ores (unlike for, say, CPO where an extensive price referencing method is provided).

PwC comment: *it appears that pricing will ultimately follow some type of international index referenced by the Ministry (e.g. via the London Metals Exchange). Further clarity is expected on this including the impact on pre-existing/long term offtake contracts.   Commercial pricing terms are of course already subject to the pricing obligations relevant for Income Tax and Royalty payments.*

PMK 75 provides that, when a number of minerals or ores are mixed, the Export Duty will be based upon the "highest priced additive".

PwC comment: *overall the export approval process and imposition of the Export Duty represents a relaxation of the earlier possibility of an outright ban on exports from 6 May 2012. Nevertheless, government policy focused on incentivising domestic processing has not changed. Mining companies will still need to develop a plan to quickly develop their onshore processing capability in anticipation of the prohibition from 2014.*


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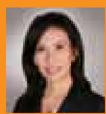

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