

## New Government Regulation on Cost Recovery in the Oil and Gas Industry

**G**overnment Regulation No. 79 of 2010 on Refundable Operating Costs and Income Tax Treatment of Upstream Oil and Natural Gas Businesses ('Regulation') has recently been issued to implement Article 31D of Law No. 7 of 1983, as amended by Law No. 36 of 2008, on Income Tax, so as to provide legal certainty with regards to what costs can and cannot be recovered.

Pursuant to Article 2 the Regulation applies to all upstream oil and natural gas service and production sharing contracts. However, pursuant to Article 38 (a) contracts that have been signed prior to the Regulation coming into force will not be affected. And income that is generated not under a contract will only be subject to the Regulation's provisions after a 3 month transition period (i.e. from 20 March 2011), pursuant to Article 38 (b) (8).

Operating costs are defined in Article 11, and, under Article 12 (1), costs that can be recovered (under Article 7 (1)) have to meet the following requirements:

- a. incurred to obtain, collect and maintain earnings in accordance with the prevailing laws and regulations, and directly related to operations in the contractor's working area in Indonesia.
- b. using a fair price that is not influenced by related parties (as defined by the Income Tax Law)
- c. operations are in accordance with the best business and engineering practices
- d. operations are in accordance with a work plan and budget that have been approved by the Head of the Executing Agency, as referred to in Articles 5 and 6

There are 24 costs that cannot be recovered, as enumerated in Article 13, these include:

- expenses incurred for personal purposes and/or families of workers, managers, participating interest holders, and shareholders
- administrative and criminal penalties
- interest expenses
- tax consultant fees
- excessive surplus materials due to improper planning and purchasing
- costs incurred prior to contract signing

Articles 14 through 20 further elaborate on the technicalities of the costs that can be recovered. And Articles 21 through 28 on the income and tax calculation specifics. Notably, Article 27 (2) sets a 5% tax on the transfer of interests during the exploration stage, and a 7% tax during the exploitation phase; except for transfers to state owned enterprises under Article 27 (3).

The Regulation has been in force since 20 December 2010. 

### ❖ Past Issues

- ✍ Information Commission Regulation on Freedom of Information Dispute Settlement Procedures (Issue 1573 - 1/5/2011)
- ✍ New Regulation on Filing Customs Objections (Issue 1572 - 1/4/2011)
- ✍ Minimum Wage for DKI Jakarta in 2011 Set at IDR 1.29 Million (Issue 1571 - 1/3/2011)
- ✍ Ministry of Finance Regulation on e-Procurement Registration (Issue 1570 - 12/30/2010)

### ❖ Documents

Government Regulation No. 79 of 2010  
(PP\_NO\_79\_2010.pdf - 168.Kb)

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Puri Imperium Office Plaza UG 15  
Kuningan, Jakarta 12319  
to subscribe, call 62-21-83701827 or fax to 62-21 83701826  
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