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By: THE PRESIDENT OF THE REPUBLIC OF INDONESIA
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Title: REFUNDABLE OPERATIONAL COSTS AND INCOME TAX TREATMENT IN
THE FIELD OF UPSTREAM BUSINESS OF NATURAL OIL AND GAS

BY THE GRACE OF THE ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. whereas based on the provisions of Article 6 paragraph (1) of Law Number 22 Year 2001 regarding Natural Oil and Gas, upstream business activities shall be conducted and controlled through joint operation contract;
- b. whereas in the implementation of joint operation contract as intended in point a, capital borne by business entity or by permanent establishment shall constitute operational costs that can be refunded by the Government of the Republic of Indonesia at the moment the upstream business activity of natural oil and gas produces commercially;
- c. whereas based on the considerations as intended in points a and b as well as for the implementation of the provisions of Article 31 D of Law Number 7 Year 1983 regarding Income Tax as several times amended most recently by Law Number 36 Year 2008 regarding the Fourth Amendment to Law Number 7 Year 1983 regarding Income Tax, it is necessary to stipulate a government regulation regarding refundable operational costs and income tax treatment in the field of upstream business of natural oil and gas;

In View of:

1. Article 5 paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia;
2. Law Number [7 Year 1983](#) regarding Income Tax (State Gazette of the Republic of Indonesia Year 1983 Number 50, Supplement to State Gazette of the Republic of Indonesia Number 3263) as several times amended most recently by Law Number [36 Year 2008](#) regarding the Fourth Amendment to Law Number 7 Year 1983 regarding Income Tax (State Gazette of the Republic of Indonesia Year 2008

Number 133, Supplement to State Gazette of the Republic of Indonesia Number 4893);

3. Law Number 22 Year 2001 regarding Natural Oil and Gas (State Gazette of the Republic of Indonesia Year 2001 Number 136, Supplement to State Gazette of the Republic of Indonesia Number 4152);

HAS DECIDED:

To Stipulate: GOVERNMENT REGULATION REGARDING REFUNDABLE
OPERATIONAL COSTS AND INCOME TAX TREATMENT IN THE FIELD
OF UPSTREAM BUSINESS OF NATURAL OIL AND GAS.

CHAPTER I GENERAL PROVISIONS

Article 1

Referred to herein as:

1. Natural oil, natural gas, natural oil and gas, exploration, exploitation, joint operation contract, Implementing Agency, working area, Indonesian mining jurisdiction, and upstream business activities shall be as intended in Law Number 22 Year 2001 regarding Natural Oil and Gas.
2. Contractor shall be business entity or permanent establishment that is stipulated to perform exploration and exploitation in a working area based on joint operation contract with Implementing Agency.
3. Operator shall be contractor or in the event that contractor consists of several holders of participating interest, one of the holders of participating interest that is appointed as representative by other holders of participating interest in accordance with joint operation contract.
4. Oil production operation shall be activities that cover exploration, exploitation, transportation, plug and abandonment as well as site restoration of natural oil and gas.
5. Lifting shall be a volume of crude oil and/or natural gas that are/is sold or divided at custody transfer point.
6. First Tranche Petroleum, hereinafter abbreviated as FTP, shall be a certain volume of crude oil and/or natural gas that are/is produced from a working area in one calendar year, that can be taken and received by Implementing Agency and/or by contractor in every calendar year, before being reduced with the refund of operational costs and handling of production (own use).
7. Investment Credit, hereinafter referred to as investment incentive, shall be addition to the refund of capital costs in a certain amount, relating directly to production

facilities, that is provided as incentive for the development of certain site of natural oil and/or gas.

8. Equity to be Split shall be the result of production available for distribution (lifting) between Implementing Agency and contractor after being reduced with FTP, investment incentive (if any), and refund of operational costs.
9. Non-capital cost shall be costs spent in operational activities of current year that possesses the term of benefit of less than 1 (one) year, including survey and intangible drilling cost
10. Capital cost shall be expenses spent for equipment or goods that possesses the term of benefit of more than 1 (one) year that is charged in current year by depreciation.
11. Work plan and budget shall be an annual planning of activities and spending of budget by contractor for upstream business activity of natural oil and gas in a working area.
12. Profit sharing contract shall be a form of joint operation contract in upstream business activity based on the principles of distribution of proceeds of production.
13. Service contract shall be a form of joint operation contract for the implementation of exploitation of natural oil and gas based on the principles of granting of commission fee for production resulted.
14. Participating Interest shall be the rights and obligations as contractor of joint operation contract, whether directly or indirectly in a working area.
15. Uplift shall be remuneration received by contractor in connection with the provision of bridging funds for financing of operation of profit sharing contract that should constitute obligation of participation of other contractor, existing in one joint operation contract, in financing.
16. Domestic Market Obligation, hereinafter abbreviated as DMO, shall be the obligation to submit contractor's portion in the form of natural oil and/or gas to fulfill local demand.
17. Remuneration of DMO shall be the remuneration that is paid by the Government to contractor upon delivery of natural oil and/or gas to fulfill local demand by using the prices stipulated by the Minister whose line of duty and responsibility cover business activities of natural oil and gas.
18. Government shall be the Central Government.
19. Minister shall be the minister who administers governmental affairs in the field of business activities of natural oil and gas.

Article 2

The provisions stipulated herein shall apply to profit sharing contract and service contract in the field of upstream business of natural oil and gas.

Article 3

- (1) Contractor must provide capitals and technology as well as must bear all risks of operation in the context of oil production operation based on joint operation contract in a working area.
- (2) The implementation of oil production operation as intended in paragraph (1) must be done based on the principles of effectiveness and efficiency, the principles of fairness, as well as good norms of business practices and methods.

Article 4

- (1) All goods and equipment purchased by contractor in the context of oil production operation shall become state property the development of which shall be done by the Government and shall be managed by the Implementing Agency.
- (2) The goods and equipment as intended in paragraph (1) in the context of refunding operational costs cannot be re-appraised.

Article 5

- (1) In conducting oil production operation, contractor must draw up work plan and budget in accordance with the good norms of business practices and methods as well as the principles of fairness.
- (2) Work plan and budget as intended in paragraph (1) shall consist of:
 - a. routine expenses; and
 - b. project expenses
- (3) Work plan and budget as intended in paragraph (2) must obtain approval from the Head of Implementing Agency.
- (4) The approval from the Head of Implementing Agency as intended in paragraph (3) shall constitute basis of contractor for conducting oil production operation.

Article 6

The project expenses as intended in Article 5 paragraph (2) sub-paragraph b, before being conducted must obtain approval for authorization of financial spending from the Head of Implementing Agency.

Article 7

- (1) Contractor shall re-obtain operational costs in accordance with work plan and budget already approved by the Head of Implementing Agency, after working area starts commercial production.

- (2) Status of the commercial production as intended in paragraph (1) shall be stipulated through approval of the Minister for plan of development of site that will be produced at the first time.
- (3) In the event that working area as intended in paragraph (1) gives no commercial production, then all operational costs already spent shall become risks and for the account of contractor fully.

Article 8

- (1) The Minister shall stipulate a minimum portion of the state from a working area related to lifting in approval for plan of development of site as intended in Article 7 paragraph (2).
- (2) The stipulation of a minimum portion of the state as intended in paragraph (1) shall be done based on the guidelines stipulated by the Minister.

CHAPTER II GROSS INCOMES AND REDUCING FACTOR OF INCOMES OF CONTRACTOR

Part One Gross Incomes of Contractor

Article 9

- (1) Gross incomes of contractor shall consist of:
 - a. incomes in the context of profit sharing contract; or
 - b. incomes in the context of service contract; and
 - c. other incomes outside joint operation contract.
- (2) The calculation of income tax on incomes in the context of profit sharing contract as intended in paragraph (1) sub-paragraph a shall be calculated based on the value of realization of natural oil and/or gas of portion of contractor from equity share and PTP share plus natural oil and/or gas originating from the refund of operational costs plus additional natural oil and/or gas originating from the granting of incentive or because of other matters reduced with the value of realization of delivery of DMO of natural oil and /or gas plus Remuneration of DMO plus variant of the prices of lifting.
- (3) The calculation of income tax on incomes in the context of service contract as intended in paragraph (1) sub-paragraph b shall be calculated based on remuneration received from the Government plus the value of realization of sales of natural oil and /or gas originating from the refund of operational costs.
- (4) Other incomes outside joint operation contract as intended in paragraph (1) sub-paragraph c shall consist of:

- a. uplift or other similar remunerations; and/or
- b. incomes originating from the transfer of participating interest.

Article 10

- (1) To guarantee state revenues, the Minister shall stipulate amount and distribution of FTP.
- (2) To support the development of working area, the Minister can stipulate the form and amount of investment incentive.

Part Two Operational Costs Article 11

- (1) Operational costs shall consist of:
 - a. exploration costs;
 - b. exploitation costs; and
 - c. other costs
- (2) The exploration costs as intended in paragraph (1) sub-paragraph a shall consist of:
 - a. drilling costs that consist of:
 - 1. exploration drilling costs; and
 - 2. development drilling costs;
 - b. geological and geophysical costs, consisting of:
 - 1. geological research cost; and
 - 2. geophysical research cost;
 - c. general and administrative costs of exploration activities; and
 - d. depreciation costs
- (3) The exploitation cost as intended in paragraph (1) sub-paragraph b shall consist of
 - a. direct cost for production for
 - 1. natural oil; and
 - 2. natural gas

- b. processing costs of natural gas;
 - c. utility costs that consist of:
 - 1. costs of equipment of production and maintenance of equipment; and
 - 2. costs of steam, water, and electricity;
 - d. general and administrative costs of exploitation activities; and
 - e. depreciation costs
- (4) General and administrative costs of exploration and exploitation activities as intended in paragraph (2) sub-paragraph c and paragraph (3) sub-paragraph d shall consist of:
- a. administrative costs and finance;
 - b. employee costs;
 - c. material service costs;
 - d. transportation costs;
 - e. general costs of office; and
 - f. indirect taxes, regional taxes, and regional levies.
- (5) Other costs as intended in paragraph (1) sub-paragraph c shall consist of:
- a. costs for gas transmission from production point to transfer point; and
 - b. costs of activities of post operation of upstream business activities.

Article 12

- (1) Operational costs that can be refunded in the calculation of profit sharing and income tax must fulfill the following requirements:
- a. spent to obtain, collect, and maintain incomes in accordance with the provisions of laws and regulations and related directly to activities of oil production operation in working area of the contractor concerned in Indonesia;
 - b. using fair prices not influenced by a special relation as intended in Income Tax Law;
 - c. the implementation of oil production operation shall be in accordance with the good norms of business practices and methods

- d. activities of oil production operation shall be in accordance with work plan and budget already obtaining approval from the Head of Implementing Agency as intended in Articles 5 and 6.
- (2) Costs spent related directly to oil production operation as intended in paragraph (1) sub-paragraph a must fulfill the following requirements:
- a. for depreciation costs, only for goods and equipment used for oil production operation becoming state property;
 - b. for direct refund of head office that is charged to projects in Indonesia from abroad only for activities that:
 - 1. cannot be conducted by agency/institution in home country;
 - 2. cannot be conducted by Indonesian manpower; and
 - 3. are not routine;
 - c. the granting of remuneration in connection with works to employees/workers in the form of in kind/ benefit shall be conducted in accordance with the provisions of laws and regulations in the field of taxation;
 - d. the granting of donation of natural disasters on behalf of the Government shall be conducted in accordance with the provisions of laws and regulations in the field of taxation;
 - e. for the spending of costs of development of the community and the environment spent only at the moment of exploration;
 - f. for expenses of allocation of indirect costs of head office provided that
 - 1. used to support business or activities in Indonesia;
 - 2. contractor delivers consolidated financial statement of the head office already audited and its allocation basis; and
 - 3. its amount not exceeding the limits specified by Regulation of the Minister of Finance after obtaining consideration of the Minister;
- (3) Maximum limit of costs relating to remuneration of expatriate workers shall be stipulated in a Regulation of the Minister of Finance after obtaining consideration of the Minister.

Article 13

The types of operational costs that cannot be refunded in calculating profits sharing and income tax shall cover:

- a. costs charged or spent for personal interests and/or interests of families of workers, executives, holder of participating interest, and of shareholders;

- b. establishment or raising of reserve funds, except for costs for plug and restoration of mining saved at joint account of the Implementing Agency and contractor in account of commercial bank of the Government of Indonesia existing in Indonesia;
- c. assets granted
- d. administrative sanctions in the form of interest, fine, and increase as well as criminal sanction in the form of penalty relating to the implementation of laws and regulations in the field of taxation as well as billing or fine arising out as a result of mistake of contractor for willful misconduct or neglect
- e. depreciation costs of goods and equipment used not owned by state;
- f. incentive, payment for pension contribution, insurance premium for personal interest and/or interest of families of expatriate workers, executives, and of shareholders;
- g. costs of expatriate workers not fulfilling the procedure for plan of use of expatriate workers (RPTKA) or having no expatriate work permit (IKTA);
- h. costs of legal consultant not relating directly to oil production operation in the context of joint operation contract;
- i. costs of tax consultant;
- j. costs of marketing of natural oil and/or gas of portion of contractor, except for costs of marketing of natural gas already approved by the Head of Implementing Agency;
- k. costs of representation, including costs of entertainment in any name and form whatsoever, except accompanied by nominative list of beneficial owners and taxpayer registration Number (NPWP) of the beneficial owners;
- l. costs of development of environment and the local community in the term of exploitation;
- m. costs of technical training for expatriate workers;
- n. costs related to merger, acquisition, or costs of the transfer of participating interest;
- o. costs of interest on loan;
- p. income tax on employees borne by contractor or paid as tax allowance and income tax that must be withheld or collected on incomes of the third party borne by contractor or grossed up;
- q. procurement of goods and services as well as other activities not in accordance with the principles of equity and good technical norms, or exceeding the value of approval of authorization of expenses above 10% (ten percent) of the value of authorization of expenses;
- r. excessive surplus of materials as a result of wrong planning and purchase;

- s. book value and operational costs of assets already used that can no longer operate as a result of neglect of contractor;
- t. transactions that:
 - 1. harm the state
 - 2. do not go through tender process in accordance with the provisions of laws and regulations, except in certain cases; or
 - 3. are contrary to laws and regulations.
- u. bonus paid to the Government;
- v. costs arising out before the signing of contract;
- w. incentives of interest recovery; and
- x. costs of commercial credit.

Article 14

In the event that there is additional income obtained in the context of oil production operation in the form of proceeds from the sales of byproducts or other forms, they shall be treated as reducing factor of operational costs.

Article 15

- (1) Goods possessing the term of benefit of not more than 1 (one) year shall be charged as operational costs at the moment of use of goods.
- (2) The charge as intended in paragraph (1) shall be done on an average basis or by prioritizing goods received first.

Article 16

- (1) Depreciation of spending of tangible assets having the term of benefit of more than 1 (one) year shall be done in declining part during the term of benefit that is calculated by applying tariff of depreciation of remaining book value and at the end of the term of benefit the remaining book value shall be depreciated entirely.
- (2) Depreciation shall start in month wherein the assets are used (placed into service).
- (3) The calculation of depreciation shall be made in accordance with group, tariff, and the term of benefit as set out in Attachment constituting integral part of this Government Regulation.
- (4) In the event that tangible assets as intended in paragraph (1) can no longer be used as a result of damage due to natural factors or force majeure, amount of remaining

book value of the tangible assets shall remain to be depreciated in accordance with the remaining term of benefit.

Article 17

- (1) Amount of reserves of costs of plug and restoration of mining that is charged for 1 (one) fiscal year, shall be calculated based on the estimated costs of plug and restoration of mining based on economic term of benefit.
- (2) The reserves of costs as intended in paragraph (1) must be saved in joint account of the Implementing Agency and contractor at commercial bank of the Government of Indonesia in Indonesia.
- (3) In the event that total realization of plug and restoration of mining is smaller or larger than amount reserved, the difference shall become a reducing or increasing factor of refundable operational costs of each working area or site concerned, after obtaining approval from the Head of Implementing Agency.
- (4) The provisions on the procedure for using reserve funds of costs of plug and restoration of mining shall be stipulated in a Regulation of the Minister.

Article 18

- (1) Contractor can charge contribution of severance to permanent employee that is paid to manager of workers severance funds stipulated by the Minister of Finance.
- (2) The procedure for managing contribution of severance and amount of severance shall be stipulated in a Regulation of the Minister of Finance

Article 19

- (1) The charge of all working costs shall be deferred until there is site that produces commercially in the working area as intended in Article 7 paragraph (1).
- (2) For safeguard of state revenues, in addition to the postponement as intended in paragraph (1), the Minister can make policies in respect of the development of site.

Article 20

- (1) Operational costs as intended in Article 12 that can be refunded in 1 (one) calendar year shall consist of:
 - a. non-capital costs of current year;
 - b. depreciation of capital costs of current year; and
 - c. operational costs that cannot yet be refunded in the preceding years.
- (2) Maximum amount of refundable operational costs as intended in paragraph (1) for service contract shall be stipulated amounting to remuneration given by the Government.

- (3) Refundable operational costs as intended in paragraph (1) that cannot yet be calculated in 1 (one) calendar year can be calculated in the next year.
- (4) Direct costs of natural oil shall be charged to production of natural oil and direct costs of natural gas shall be charged to production of natural gas.
- (5) In the event that there is joint cost of natural oil and gas, the joint cost shall be allocated in accordance with proportion of the relative value of production result.
- (6) In the event that a site or working area has produced one type of production result of natural oil or natural gas, meanwhile the other type of production gives no result, the joint costs as intended in paragraph (5) shall be allocated fairly based on consensus between the Implementing Agency and contractor.
- (7) The refund of operational costs for natural oil shall be done only to lifting of natural oil, whereas the refund of operational costs for natural gas shall be done only to the value of sale of natural gas.
- (8) In the event that the refund of operational costs of natural oil or natural gas does not cover the result of production or value of sales, the following shall be determined:
 - a. operational costs of natural gas exceeding the value of production, its difference shall be charged to the result of production of natural oil;
 - b. operational costs of natural oil exceeding the value of production, its difference shall be charged to value of sales of natural gas.

CHAPTER III ACKNOWLEDGEMENT AND MEASURING OF INCOMES

Article 21

Incomes of contractor for profit sharing contract shall be acknowledged at transfer point.

Article 22

- (1) Incomes from joint operation contract in the form of sales of natural oil shall be valued by using the prices of the Indonesian crude oil.
- (2) The methodology and formula of the prices of the Indonesian crude oil as intended in paragraph (1) shall be stipulated jointly by the Minister and the Minister of Finance.
- (3) The provisions on the procedure for establishing the methodology and formula of the prices of the Indonesian crude oil as intended in paragraph (2) shall be stipulated in a Regulation of the Minister.

Article 23

- (1) Incomes from joint operation contract in the form of natural gas sales contract shall be calculated based on the prices agreed upon in the natural gas sales contract.
- (2) In the event that natural gas sales as intended in paragraph (1) is conducted after natural gas is obtained through further process that is approved by the Minister, incomes acknowledged shall be calculated based on the proceeds from sale received less components of sale costs.

CHAPTER IV CALCULATION OF PROFIT SHARING Article 24

- (1) In the event that there are no FTP and investment incentive, then equity to be split shall be calculated based on lifting less refundable operational costs as intended in Article 20.
- (2) In the event that there is FTP but there is no investment incentive, then equity to be split shall be calculated based on lifting less FTP less refundable operational costs.
- (3) In the event that there are FTP and investment incentive, then equity to be split shall be calculated based on lifting less FTP less investment incentive less refundable operational costs.
- (4) In the event that there is not FTP but there is investment incentive, then equity to be split shall be calculated based on lifting less investment incentive less refundable operational costs.
- (5) Investment incentive and refundable operational costs in accordance with the provisions of laws and regulations shall be converted into:
 - a. natural oil, with the average prices of Indonesian crude oil as intended in Article 22; or
 - b. natural gas, with the prices agreed in natural gas sales contract.
- (6) Portion of contractor for joint operation contract, shall be calculated based on the percentage of contractor's portion before income tax stated in joint operation contract times equity to be split.
- (7) Portion of the Government for joint operation contract, shall be calculated based on the percentage of the Government's portion stated in joint operation contract times equity to be split therein excluding income tax payable by contractor.
- (8) Contractor must discharge obligation of DMO by submitting 25% (twenty five percent) of its portion of production of natural oil and/or natural gas to meet local demand.
- (9) Contractor shall obtain remuneration of DMO upon the delivery of natural oil and/or natural gas as intended in paragraph (8) at the price stipulated by the Minister.

CHAPTER V

CALCULATION OF INCOME TAX
Article 25

- (1) Taxable incomes for 1 (one) fiscal year to contractor for profit sharing contract, shall be calculated based on incomes in the context of profit sharing contract as intended in Article 9 paragraph (2) less non-capital costs of current year less depreciation of capital costs of current year less operational costs not yet refunded in the preceding years.
- (2) In the event that the amount of reducing factor as intended in paragraph (1) is larger than incomes as intended in Article 9 paragraph (2), the deficit shall be calculated in the next fiscal year until the end of contract.
- (3) Amount of income tax payable by contractor, shall be calculated based on taxable incomes as intended in paragraph (1) times tax tariff that is determined in accordance with the provisions of laws in the field of income tax.
- (4) Amount of income tax payable by contractor the contract of which is signed before the coming into effect of this Government regulation, shall be calculated based on tax tariff of company or income tax at the moment of the signing of contract.
- (5) The taxable incomes as intended in paragraph (1) after being reduced with income tax as intended in paragraph (3) or (4), shall be subject to income tax in accordance with the provisions of laws and regulations.
- (6) In the event that contractor is in the form of Indonesian legal entity, taxable incomes as intended in paragraph (1) after being reduced with income tax as intended in paragraph (3) shall be treated as dividend that is provided to be paid and shall be subject to income tax in accordance with the provisions of laws and regulations.
- (7) Upon the fulfillment of obligation of income tax as intended in paragraphs (3), (4), (5) and (6) income tax payment assessment letter of natural oil and gas shall be issued following tax audit.
- (8) Before income tax payment assessment letter of natural oil and gas is issued, temporary income tax payment assessment letter of natural oil and gas can be issued.
- (9) The provisions on the issuance of income tax payment assessment letter of natural oil and natural gas as intended in paragraph (7) and temporary income tax payment assessment letter of natural oil and natural gas as intended in paragraph (8) shall be stipulated in a Regulation of the Director General of Taxation.
- (10) Contractor shall be exempted from the collection of import duty and tax in the context of import on goods used in oil production operation in activities of exploration and exploitation.
- (11) The provisions on the procedure for exempting import duty and tax in the context of import as intended in paragraph (10) shall be stipulated in accordance with the provisions of laws and regulations.

Article 26

- (1) Taxable incomes for 1 (one) fiscal year for contractor in the context of service contract, shall be based on incomes as intended in Article 9 paragraph (3) less non-capital costs of current year less depreciation of capital costs of current year less all operational costs as intended in Article 12 not yet refunded.
- (2) The provisions on maximum amount of reducing factor as intended in paragraph (1) plus remuneration given by the Government to contractor shall be stipulated in a Regulation of the Minister.
- (3) In the event that amount of reducing factor as intended in paragraph (1) is larger than incomes as intended in Article 9 paragraph (3), the deficit shall be calculated in the next fiscal year until the end of contract.
- (4) Amount of income tax payable to contractor based on taxable incomes as intended in paragraph (1) shall be multiplied by tariff in accordance with the provisions of laws and regulations in the field of income tax.
- (5) The taxable incomes as intended in paragraph (1) after being reduced with income tax as intended in paragraph (4) shall be treated as dividend that is provided for payment and shall be subject to income tax in accordance with the provisions of laws and regulations.

CHAPTER VI INCOMES OUTSIDE JOINT OPERATION CONTRACT Article 27

- (1) Contractor's other incomes in the form of uplift or other similar remuneration as intended in Article 9 paragraph (4) sub-paragraph a, shall be imposed with income tax that is final in nature of 20% (twenty percent) tariff of the gross amount
- (2) Contractor's incomes from the transfer of participating interest as intended in Article 9 paragraph (4) sub-paragraph b shall be subject to income tax that is final in nature with tariff of:
 - a. 5% (five percent) of the gross amount, for the transfer of participating interest during the term of exploration, or
 - b. 7% (seven percent) of the gross amount, for the transfer of participating interest during the term of exploitation.
- (3) The imposition of income tax as intended in paragraph (2) sub-paragraph b, shall be excepted insofar as it is for discharge of obligation of the transfer of participating interest in accordance with joint operation contract to national company as set forth in the joint operation contract.
- (4) The provisions on the procedure for withholding and payment of income tax as intended in paragraphs (1), (2), and (3) shall be stipulated in a Regulation of the Minister of Finance.

Article 28

In the context of sharing risks in the period of exploration, the transfer of participating interest shall not cover incomes as intended in Article 9 paragraph (4) sub-paragraph b if it fulfills the following criteria:

- a. not transferring all participating interests owned;
- b. participating interest has been owned by more than 3 (three) years;
- c. exploration has been done in working area (there have been investment expenses)
- d. the transfer of participating interest is not aimed at making profits.

CHAPTER VII BOOKKEEPING OF CONTRACTOR Article 29

- (1) Bookkeeping or recording must be managed with due observance of good faith and shall reflect the actual conditions or business activities.
- (2) Bookkeeping or recording must be managed in Indonesia by using Latin letters, Arabic numbers, and shall be drafted in Indonesian language or in foreign languages after obtaining approval from the Minister of Finance.
- (3) Bookkeeping must be managed with compliant principles, in accordance with the statement of financial accounting standards, and in accordance with the principles of profit sharing contract.
- (4) Bookkeeping shall at least consist of records of assets, liabilities, capitals, incomes and costs, as well as sales and purchases so that amount of tax payable can be calculated.
- (5) Books, records, and documents becoming basis for bookkeeping or recording and other documents including the result of data processing of bookkeeping managed electronically or by online application program must be provided in Indonesia as long as the costs as intended in Article 12 are not yet refunded.

Article 30

- (1) For tax calculation, the Directorate General of Taxation shall establish amount of costs in phase of exploration every year in the field of upstream business of natural oil and natural gas after obtaining recommendation from the Implementing Agency.
- (2) Before establishing the amount of costs as intended in paragraph (1), State auditor on behalf of the Directorate General of Taxation shall conduct audit.
- (3) In the event that the amount of costs recommended by the Implementing Agency as intended in paragraph (1) is different from the amount of costs of the result of audit of State auditor as intended in paragraph 2), State auditor and the Implementing Agency must settle the difference.

CHAPTER VIII OBLIGATIONS OF CONTRACTOR AND/OR OPERATOR

Article 31

- (1) Any contractor in a working area must:
 - a. register to obtain taxpayer registration Number;
 - b. manage bookkeeping;
 - c. deliver annual income tax return;
 - d. pay tax installment in current year for every month by no later than the 15th (fifteenth) day of the next month, and taxable incomes shall be calculated on lifting actually occurring in a calendar month.
 - e. fulfill other provisions in accordance with the provisions of laws and regulations in the field of taxation.
- (2) In the event of the transfer of participating interest or the transfer of shares, contractor must report its value to the Director General of Taxation.
- (3) In the event of the transfer of participating interest, taxation rights and obligations shall go to new contractor.
- (4) The format and content of Annual Income Tax Return as intended in paragraph (1) sub-paragraph c shall be stipulated in a Regulation of the Director General of Taxation.

Article 32

- (1) Every operator in a working area must:
 - a. register joint operation contract to obtain taxpayer registration number different from taxpayer registration number as intended in Article 31 paragraph (1) sub-paragraph a;
 - b. discharge obligations of tax withholding and/or collection;
 - c. manage bookkeeping for activities of oil production operation for the working area concerned.
- (2) In the event of replacement of operator, the obligations as intended in paragraph (1) shall go to new operator.

Article 33

- (1) Natural oil and/or natural gas of the government's portion from profit sharing contract as intended in Article 24 shall be calculated based on volume of natural oil and/ or natural gas

- (2) In the event that the Government needs natural oil and/ or natural gas to meet local demand, income tax of contractor from profit sharing contract, can be in the form of volume of natural oil and/ or natural gas of contractor's portion.
- (3) The provisions on the calculation and procedure for the delivery of the Government's portion as intended in paragraph (1) shall be stipulated in a Regulation of the Minister.
- (4) The provisions on the calculation and procedure for paying Income Tax as intended in paragraph (2) shall be stipulated in a Regulation of the Minister of Finance.

CHAPTER IX OBLIGATIONS OF IMPLEMENTING AGENCY

Article 34

- (1) Implementing Agency must issue the standard or norms, type, category, and amount of costs used in activities of oil production operation at the same time as the coming into effect of this Government Regulation.
- (2) Implementing Agency must deliver report of bookkeeping on the implementation of refund of operational costs to the Director General of Taxation and the Director General of Natural Oil and Gas periodically every year and at any time if necessary.

CHAPTER X MISCELLANEOUS PROVISIONS

Article 35

- (1) Contractor must enter into transactions in Indonesia and shall settle payment by banking system in Indonesia.
- (2) The transactions and settlement of payment as intended in paragraph (1) can only be done outside Indonesia after obtaining approval of the Minister of Finance.

Article 36

- (1) The Minister of Finance in certain circumstances can appoint independent third party to conduct financial and technical verification after coordinating with the Minister.
- (2) The appointment of third party as intended in paragraph (1) shall be conducted in accordance with the provisions of laws and regulations in the field of procurement of goods and services.

Article 37

In the event that there are change of legal status and/or change of status of domicile and/or the transfer of participating interest or of share ownership and/or any other matters to contractor that cause change of calculation of income tax, the amount of portion of state revenues must be constant.

CHAPTER XI
TRANSITIONAL PROVISIONS
Article 38

As this Government Regulation comes into effect:

- a. Joint operation contract already signed before the promulgation of this Government Regulation, shall be declared still applicable until the date of the end of the contract concerned.
- b. Any matters not yet stipulated or not yet sufficiently stipulated expressly in joint operation contract as intended in point a for the provisions on:
 - 1. amount of portion of state revenues
 - 2. requirements for refundable operational costs and the norms of charge of operational costs;
 - 3. non-refundable operational costs;
 - 4. appointment of independent third party to conduct financial and technical verification;
 - 5. issuance of income tax assessment letter;
 - 6. exemption from import duty and tax in the context of import on goods in activities of exploration and exploitation;
 - 7. contractor's income tax in the form of volume of natural oil and/or natural gas of contractor's portion; and
 - 8. incomes from outside joint operation contract in the form of uplift and/or transfer of participating interest,

by no later than 3 (three) months must be adjusted to this Government Regulation.

CHAPTER XII
CLOSING PROVISIONS
Article 39

Joint operation contract in upstream business activities of natural oil and natural gas that is entered into or extended following the coming into effect of this Government Regulation must comply with the provisions herein.

Article 40

This Government Regulation shall come into effect on the date of promulgation.

For public cognizance, hereby ordering the promulgation of this Government Regulation by placing it in State Gazette of the Republic of Indonesia.

Stipulated in Jakarta
on December 20, 2010

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

signed

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta
on December 20, 2010

THE MINISTER OF LAW AND HUMAN RIGHTS
OF THE REPUBLIC OF INDONESIA,

signed

PATRIALIS AKBAR

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2010 NUMBER 139

Issued as a true copy
STATE SECRETARIAT OF THE REPUBLIC OF INDONESIA
Head of Legislation Bureau
Economy and Industry Division,

signed and stamped

Setio Sapto Nugroho

ELUCIDATION
ON
GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 79 YEAR 2010

REGARDING
REFUNDABLE OPERATIONAL COSTS AND INCOME TAX TREATMENT IN THE FIELD
OF UPSTREAM BUSINESS OF NATURAL OIL AND GAS

I. GENERAL

Article 33 paragraphs (2) and (3) of the 1945 Constitution confirm that lines of production that are important to the state that control the need of life of the people at large shall be under control of the state including natural oil and gas constituting strategic natural resources that are not renewable. Since natural oil and gas constitute one of the sources of state revenues that are important, it shall be managed as efficiently and optimally as possible so that they can be utilized for the maximum prosperity and welfare of the people.

Management of natural oil and gas until now is done by profit sharing contract system that is also applied by most oil producing countries.

This Government Regulation further guarantees state revenues originating from incomes of profit sharing contract or other incomes to become more optimum, among other things, through:

- a. costs that can be reduced from the gross incomes will be the same as costs that can be refunded by the Government;
- b. type, requirements, method of allocation, and limit of amount of the costs will be stipulated carefully so that state revenues are more optimum and legal certainty can be created;
- c. indirect taxes such as value added tax (VAT), import duty, land and building tax, regional taxes and regional levies currently becoming the Government's burden shall be changed to become joint burden of the Government and contractor by way of bookkeeping of payment of the indirect taxes as component of costs;
- d. contractor is required to pay personally income tax payable on costs received or earned outside the scheme of joint operation contract.

The stipulation of this Government Regulation shall be aimed at preventing any misuse of application of Double Taxation Avoidance Agreement.

In the context of optimizing state revenues from the existing contracts, Law Number 41 Year 2008 regarding State Revenues and Expenditures Budget of Fiscal Year 2009 mandates the Government to issue regulation on Refund of Operational Costs already spent by contractor in the context of joint operation contract. Therefore, the provisions stipulated herein shall also be applicable to joint operation contract already signed before the coming into effect of this Government Regulation with some transitional provisions.

II. ARTICLE BY ARTICLE

Article 1

Self explanatory.

Article 2

Self explanatory.

Article 3

Paragraph (1)

In the event of joint operation contract in the field of upstream business of natural oil and gas, the Government shall provide the natural resources whereas contractor must prepare capital and technology. The consequence shall be that contractor is not allowed to charge costs of interest and costs of royalty and the like in refundable operational costs.

Paragraph (1)

Self explanatory.

Article 4

Paragraph (1)

Principally, all expenses for goods and equipment purchased by contractor shall constitute state-owned ones, so that the expenses shall constitute operational costs that can be refunded by the Government to contractor based on the price of acquisition.

Paragraph (2)

Self explanatory.

Article 5

Paragraph (1)

Referred to as the good norm of business practices shall cover the norm of business practices that is usually applicable and fair in accordance with the ethics of business, whereas good technical norms shall cover:

- a. fulfilling the provisions on work safety and health as well as protection and management of the environment;
- b. producing natural oil and gas in accordance with the goods norms of management of reservoir
- c. producing well of natural oil and gas by the correct method;
- d. applying the right technology of acquisition of oil of advanced level;
- e. increasing the efforts of increase of capacity of reservoir to transmit fluid by the right technique; and
- f. fulfilling the provisions on standard of equipment required

Paragraph (2)

Sub-paragraph a

Routine expenses shall be, among other things, payment of salaries, costs of maintenance, and costs of post operation of mining.

Sub-paragraph b

Project expenses shall be, among other things, development of facilities of production and activities of seismic survey.

Paragraph (3)

Self explanatory.

Paragraph (4)

Self explanatory.

Article 6

Authorization of financial spending shall be authorization for expenditure (AFE).

Article 7

Self explanatory.

Article 8

Self explanatory.

Article 9

Paragraph (1)

Self explanatory.

Paragraph (2)

Referred to as variant of prices of lifting shall be the difference of prices occurring because of different monthly prices of Indonesian crude oil and the weighted average price of Indonesian crude oil.

Paragraph (3)

Self explanatory.

Paragraph (4)

Self explanatory.

Article 10

Paragraph (1)

Self explanatory.

Paragraph (2)

The development of working area in these provisions shall cover extensification and intensification.

Article 11

Costs that can be deducted from costs shall be the same as costs to be refunded by Government to contractor in the context of joint operation contract, and vice versa. These principles shall be referred to as uniformity principle.

Operational costs as intended in these provisions shall constitute costs becoming basis for calculating profit sharing and Taxable Incomes.

Paragraph (1)

Self explanatory

Paragraph (2)

Self explanatory

Paragraph (3)

Sub-paragraph a

Self explanatory

Sub-paragraph b

Self explanatory

Sub-paragraph c
Self explanatory

Sub-paragraph d
Self explanatory

Sub-paragraph e
Referred to as costs of depreciation shall be, among other things,:

1. facilities of productions;
2. office building, warehouse, housing;
3. machinery and equipment

Paragraph (4)
Self explanatory.

Paragraph (5)

Sub-paragraph a
Referred to as costs of transfer of gas from production point to transfer point shall be marketing costs.

Sub-paragraph b
Self explanatory.

Article 12

Paragraph (1)

Sub-paragraph a
Costs for obtaining, collecting and maintaining incomes shall be referred to as daily costs that can be charged in the year of spending. To be deducted as expenses, the expenses must has relation whether directly or indirectly to business activities or activities for obtaining, collecting and maintaining incomes with activities of oil production operation in site that is produced commercially in the working area concerned in Indonesia.
Accordingly, expenses for obtaining, collecting and maintaining incomes constituting non-tax object in accordance with the provisions of laws and regulations in the field of income tax and/or for incomes that are imposed with final income tax, cannot be deducted as refundable expenses.

Sub-paragraph b
Self explanatory

Sub-paragraph c
Self explanatory

Sub-paragraph d

Self explanatory

Paragraph (2)

Sub-paragraph a
Self explanatory

Sub-paragraph b
Referred to as “direct costs of head office charged to project” shall be costs relating directly to activities of oil production operation in Indonesia with the following requirements:

1. cannot be conducted by domestic institution/agency;
2. cannot be conducted by Indonesian manpower; and
3. not routine.

Sub-paragraph c
Self explanatory

Sub-paragraph d
Self explanatory

Sub-paragraph e
Self explanatory

Sub-paragraph f
Self explanatory

Paragraph (3)
Regulation of the Minister of Finance shall at least stipulate the time of application of remuneration.

Article 13

Sub-paragraph a
Self explanatory.

Sub-paragraph b
Self explanatory

Sub-paragraph c
Assets granted cannot be deducted as expenses because the assets are owned by the state.

Sub-paragraph d
Self explanatory

Sub-paragraph e
Self explanatory

Sub-paragraph f
Self explanatory

Sub-paragraph g

Self explanatory

Sub-paragraph h
Self explanatory

Sub-paragraph i
Self explanatory

Sub-paragraph j
Self explanatory

Sub-paragraph k
Self explanatory

Sub-paragraph l
Self explanatory

Sub-paragraph m
Self explanatory

Sub-paragraph n

Costs relating to merger and acquisition shall be among other things:

- a. personal and consultant costs relating to due diligence;
- b. external costs for press release, promotion, and change of company logo;
- c. costs relating to separation program and retention program, costs relating to information system technology (insofar as the old system is not yet fully depreciated), costs relating to removing of office, costs arising out of the change of policies on project going on.

Sub-paragraph o
Referred to as "interest on loan" shall be interest on loan for financing oil production operation.

Sub-paragraph p
Self explanatory

Sub-paragraph q
Self explanatory

Sub-paragraph r
Referred to as "wrong planning" shall be acts of contractor in drafting plan that can be categorized as gross negligence or willful misconduct. Referred to as gross negligence or willful misconduct shall be any intentional action or carelessness committed by management or by senior official of contractor that:

- a. has a consequence of being known or is properly known that it can result in loss to people or in threat of security or ownership of other person or entity; or
- b. fatally violates the standard of prudence that in its/his fatal negligence or carelessness can result in harmful consequences.

Sub-paragraph s

Referred to as “negligence of contractor” shall be gross negligence or willful misconduct.

A part of costs of construction of facilities of production/equipment that cannot be deducted shall become non-refundable operational costs in the event that:

- a. it cannot be evidenced that capacity of facilities of production fulfils the target agreed, so that the charge can only be done proportionally to the evidenced capacity;
- b. it cannot be evidenced that performance of facilities of production fulfills the criteria established so that the charge can only be done proportionally to the work performance evidenced;
- c. in the period of construction there is repair or re-production/replacement of facilities of production entirely and/or partly that is included in coverage of construction all risk insurance;
- d. in the period of guarantee, there is damage as a result of wrong manufacturing, then costs of repair or replacement shall be the responsibility of goods/services providing contractor.

Sub-paragraph t

Point 1

Referred to as “transaction that harms state” shall be transaction entered into not in accordance with the provisions of laws and regulations that causes loss to the state such as procurement of goods and services not in accordance with the specification stipulated and others.

Point 2

Referred to as not through tender process in these provisions shall be the entire procurement of goods and services must be through tender process in accordance with the applicable need, but for the procurement of goods and services for emergency need, it can be permitted not to go through tender process.

Point 3

Self explanatory

Sub-paragraph u

Self explanatory

Sub-paragraph v
Self explanatory

Sub-paragraph w
Self explanatory

Sub-paragraph x
In the event that there are urgent national interests, among other things, the continuity of production, acceleration of increase in production of natural oil and/or gas, that give a maximum benefit to the state, it can be exempted from these provisions.

Article 14
Referred to as additional incomes originating from the proceeds of sales of byproduct, among other things, sales of sulphur and sales of overcapacity of electricity.

Article 15
Self explanatory.

Article 16

Paragraph (1)
Self explanatory.

Paragraph (2)
Referred to as “placed into service” shall be the time of commencement of use of tangible assets and fulfilling the requirements stipulated by the Implementing Agency.

Paragraph (3)
Self explanatory.

Paragraph (4)
Self explanatory.

Article 17
Paragraph (1)
Referred to as “fiscal year” shall be the calendar year.

Paragraph (2)
Self explanatory.

Paragraph (3)
Self explanatory.

Paragraph (4)
Self explanatory.

Article 18

Self explanatory.

Article 19

Paragraph (1)

Self explanatory.

Paragraph (2)

Referred to as “measure” shall be, among other things, in the context of refund of costs that is based on economic level of field or some fields in proposal of one plan of development of field (POD basis) or development of field that is based on economic level in one field (field basis) or development of field that is based on economic level of one well or some wells by not developing own production facilities (put on production).

Article 20

Paragraph (1)

Sub-paragraph a

Self explanatory.

Sub-paragraph b

Self explanatory.

Sub-paragraph c

Referred to as “operational costs that cannot yet be refunded in the preceding years” shall be part of balance of operational costs that cannot yet be refunded at the beginning of the year, so that it can be refunded in current year in accordance with profit sharing system.

Paragraph (2)

Self explanatory.

Paragraph (3)

Self explanatory.

Paragraph (4)

Self explanatory.

Paragraph (5)

Self explanatory.

Paragraph (6)

Self explanatory.

Paragraph (7)

Self explanatory.

Paragraph (8)

Self explanatory.

Article 21

Referred to as “transfer point” shall be point of transfer of title of natural oil and/or natural gas from the Government to contractor.

Article 22

Paragraph (1)

Self explanatory.

Paragraph (2)

Referred to as “price of Indonesian crude oil” shall be the price of crude oil stipulated by the Minister periodically.

Paragraph (3)

Self explanatory.

Article 23

Paragraph (1)

Self explanatory.

Paragraph (2)

Referred to as “component of costs of sale” shall be costs relating to activities of further processing of gas up to its sales, among other things, costs of loan for development of refinery, costs of operation of refinery, transportation, marketing costs.

Article 24

Self explanatory.

Article 25

Paragraph (1)

Self explanatory.

Paragraph (2)

Self explanatory.

Paragraph (3)

Referred to as “tax tariff” in accordance with the provisions of laws and regulations in the field of Income Tax in this provisions shall be the application of tax tariff in accordance with amount of tax tariff chosen by contractor, namely tax tariff applicable at the moment the joint operation contract is signed or tax tariff in accordance with the applicable provisions of laws and regulations in the field of taxation and can change any time.

Paragraph (4)

Self explanatory.

Paragraph (5)

Self explanatory.

Paragraph (6)

Self explanatory.

Paragraph (7)

Referred to as “income tax payment assessment letter on natural oil and natural gas” shall be tax assessment letter that is issued by the Director General of Taxation following audit.

Paragraph (8)

Referred to as “temporary income tax payment assessment letter on natural oil and natural gas” shall be tax assessment letter that is issued by the Director General of Taxation before audit that is used, among other things, for internal interests of management of head office.

Paragraph (9)

Self explanatory.

Paragraph (10)

Self explanatory.

Paragraph (11)

Self explanatory

Article 26

Self explanatory.

Article 27

Paragraph (1)

Self explanatory.

Paragraph (2)

Self explanatory.

Paragraph (3)

Participating interest shall be done based on laws and regulations.

Paragraph (4)

Self explanatory

Article 28

Self explanatory.

Article 29

Self explanatory.

Article 30

Self explanatory.

Article 31

Paragraph (1)

Self explanatory.

Paragraph (2)

Self explanatory.

Paragraph (3)

If interest in a working area is owned by contractor A, contractor B, and contractor C and then the interest of contractor A is transferred to contractor D, then taxation obligation on the interest shall become obligation of contractor D as from the transfer of interest applicable effectively.

Paragraph (4)

Self explanatory.

Article 32

Paragraph (1)

Sub-paragraph a

If contractor A has signed joint operation contract of natural oil and gas with the Government in working area X, then contractor A that also acts as operator must register the working area to obtain NPWP that is different from the contractor's own NPWP.

Sub-paragraph b

Self explanatory.

Sub-paragraph c

Self explanatory.

Paragraph (2)

If contractor B becomes operator to replace contractor A, then the obligation shall go to contractor B as from the transfer of operator is applicable effectively.

Article 33

Self explanatory.

Article 34

Paragraph (1)

Referred to as "standard or norm, type, category, and amount of costs" shall be a parameter whether qualitative and/or quantitative constituting a range of value that represents technical condition and fairness of component of costs of goods and services that is used as comparison in approval process of work plan and budget as well as authorization of financial spending.

The charge of operational costs shall be based on the realization of costs spent based on process of procurement of goods and services in accordance with the provisions of laws and regulations. The standard or norm, type, category, and amount of costs will be evaluated in accordance with the need.

Paragraph (2)
Self explanatory.

Article 35
Self explanatory.

Article 36

Paragraph (1)
Referred to as “certain circumstance” shall be disaster caused by the nature that arises out potential of state loss in the form of decrease in revenues and/or loss to state assets in activities of exploration and/or exploitation of natural oil and/or natural gas.

Paragraph (2)
Self explanatory.

Article 37
These provisions shall be aimed at keeping amount of state revenues (amount of tax and non-tax state revenues) so that they will not change in accordance with the amount of state revenues as set out in joint operation contract.

Article 38

Sub-article a
Self explanatory.

Sub-article b
Self explanatory.

Article 39
Self explanatory.

Article 40
Self explanatory.

SUPPLEMENT TO STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 5173

Note

ATTACHMENT TO GOVERNMENT REGULATION NUMBER 79 YEAR 2020

GROUP OF TANGIBLE ASSETS, PERIOD OF BENEFIT, AND TARIFF

GROUP AND TARIFF	PERIOD OF BENEFIT
GROUP I : 50% Tariff	
1. Passenger car	1.5 years
2. Light truck (13,000 pounds or less) and tractor	2 years
3. Heavy truck (above 13,000 pounds)	3 years
4. Aircraft	3 years
5. Equipment of construction	3 years
GROUP II : 25% Tariff	
1. Bus	4.5 years
2. Office equipment and home appliances	5 years
3. Facilities building and support buildings	5 years
4. Production facilities	5 years
5. Railway coach and locomotive	7.5 years
6. Equipment of drilling and production as well as equipment and its instruments.	5 years
GROUP III: 12.5% Tariff	
1. Ship, barge, tugboat, and similar floating facilities	9 years
2. Office building and housing as well as welfare	10 years

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Signed

DR. H. SUSILO BAMBANG YUDHOYONO

Issued as a true copy
STATE SECRETARIAT OF THE REPUBLIC OF INDONESIA
Head of Legislation Bureau
Economy and Industry Division,

signed and stamped

Setio Sapto Nugroho

Source: LOOSE LEAF STATE SECRETARIAT YEAR 2010