MINISTER OF FINANCE

REPUBLIC OF INDONESIA

MINISTER OF FINANCE REPUBLIC OF INDONESIA REGULATION NUMBER 256/PMK.011/2011

CONCERNING

THE LIMITATION OF COST RECOVERY FOR INDIRECT HEAD OFFICE COST ALLOCATION IN RELATION TO THE CALCULATION OF PRODUCTION SHARING AND INCOME TAX FOR THE OIL AND GAS CONTRACTOR

BY THE GRACE OF GOD ALMIGHTY

MINISTER OF FINANCE REPUBLIC OF INDONESIA

Considering: that in order to implement the provision of Article 12 paragraph (2) letter f number 3 of Government Regulation Number 79 Year 2010 regarding Cost Recovery and Treatment for Income Tax in the Upstream Oil and Gas Business, it is necessary to stipulate Minister of Finance Regulation regarding The Limitation of Cost Recovery for Indirect Head Office Cost Allocation in relation to the Calculation of Production Sharing and Income Tax for the Oil and Gas Contractor;

In view of:

1. Law Number 6 Year 1983 on the General Provisions and Tax Procedures (State Gazette Law Number 6 of 1983 regarding General Taxation Provisions and Procedures (State Gazette of the Republic of Indonesia of 1983 Number 49, Supplementary State Gazette of the Republic of Indonesia Number 3262) as lastly amended by Law Number 16 of 2009 (State Gazette of the Republic of Indonesia of 2009 Number 62, Supplementary State Gazette of the Republic of Indonesia Number 4999);

2. Law Number 7 Year 1983 regarding Income Tax (State Gazette of the Republic of Indonesia of 1983 Number 50, Supplementary State Gazette Number 3263) as lastly amended by Law Number 36 of 2008 (State Gazette of the Republic of Indonesia of 2008 Number 133, Supplementary State Gazette of the Republic of Indonesia Number 4893);

3. Government Regulation Number 79 of 2010 regarding Cost Recovery and Treatment for Income Tax in the Upstream Oil and Gas Business (the State Gazette of the Republic of Indonesia of 2010 Number 139, Supplementary State Gazette Number 5173);

4. Presidential Decree Number 56/P Year 2010;

MINISTER OF FINANCE

REPUBLIC OF INDONESIA

DECIDES:

To stipulate: The Minister of Finance Regulation regarding The Limitation of Cost Recovery for Indirect Head Office Cost Allocation in relation to the calculation of Production Sharing and Income Tax for the Oil and Gas Contractor

Article 1

In this Minister of Finance Regulation, referred to as:

1. Contractor of Oil and Gas Cooperation Contract hereinafter referred as Contractor is a business entity or Permanent Establishment appointed to conduct exploration and exploitation in a work area based on Cooperation Contract ("CC") with the Executive Board.

2. Head Office is a business entity which performs any financing activities and / or investment to support the petroleum operations of its affiliates, including in Indonesia, and to provide support services for petroleum operations of its affiliates, and also who prepares a consolidated financial statement.

3. Executive Board is an entity established to control activities in the upstream oil and gas sector.

4. Petroleum Operations is an activity which includes exploration, exploitation, transportation, plug and abandonment of wells, also restoration of oil and gas site.

5. Exploration means activities with the objective to obtain information on geological conditions in order to locate and obtain estimated Oil and Natural Gas reserves in a designated work area.

6. Exploitation is a series of activities with the objective to produce Oil and Natural Gas in a designated work area, consisting of drilling and completion of wells, construction of facilities for transportation, storage, and field processing for separation and refining of Oil and Natural Gas and other supporting activities.

7. Capital Cost is the expenditure for equipment or goods with useful life of more than one year and which is charged in the current year through depreciation.

8. Non-capital Cost is the Cost spent on the current year operational activities with a useful life of less than a year including survey and intangible drilling Cost.

Article 2

Indirect Head Office Cost Allocation can be recoverable for the calculation of production sharing and becomes a deduction of the gross income for the calculation of the Income Tax of Contractor.

Article 3

(1) Indirect Head Office Cost Allocation that can be recoverable and becomes a deduction of gross income as mentioned in the Article 2 should meet the following requirements:

a. incurred to obtain, collect and maintain income in accordance with the prevailing laws and regulations and directly related to Petroleum Operations activities in the designated Contractor's work area in Indonesia;

b. used to support the business or activities in Indonesia;

c. Contractor already submitted a consolidated audited head office financial statements;

d. Contractor already submitted the basis for the allocation of Indirect Head Office Cost which are:

1) for the Contractor in the Exploration stage, it is the Work Program and Budget ("WP&B") that has been approved by the Executive Board;

2) for the Contractor in the Exploitation stage, these are :

a) the written approval of Indirect Head Office Cost Allocation method from the Executive Board, in the event where a detailed study has been performed by the Executive Board; or

b) the proposal of Indirect Head Office Cost Allocation method which has been declared as complete by the Executive Board, in the event where the detailed study has not been performed by the Executive Board.

(2) If the requirements as referred in paragraph (1) letter a, b, c and / or letter d are not fulfilled by the Contractor, the Indirect Head Office Cost Allocation will not be recoverable and will not be allowed as a deduction against gross income for the Income Tax calculation.

Article 4

(1) The amount of Indirect Head Office Cost Allocation as referred to Article 2 are:

a. at maximum 2% (two percent) of the total Capital Cost and Non-Capital Cost incurred during the Exploration stage in the Contractor's work area in Indonesia;

b. at maximum 2% (two percent) of the total Capital Cost and Non-Capital Cost incurred in the relevant year during the Exploitation stage in the Contractor's work area in Indonesia;

with examples of calculation as attached in the Attachment, for which such Attachment is inseparable from this Minister of Finance Regulation.

(2) Exploration stage as referred in paragraph (1) letter a commences from the effective date of the CC until the year of the first Plan of Development approval on the Contractor's work area.

(3) Exploitation stage as referred in paragraph (1) letter b commences from the expiration of the Exploration stage as referred in paragraph (2) until the expiration date of the CC.

(4) If the amount of Indirect Head Office Cost Allocation which has been approved by the Executive Board is less than the amount of Indirect Head Office Cost Allocation as referred in paragraph (1), the amount of the Indirect Head Office Cost Allocation that can be recoverable for the production sharing calculation and is allowable to be a deduction against gross income for the Income Tax calculation of the Contractor is the amount which does not exceed the ones that has been approved by the Executive Board.

Article 5

This Minister Regulation shall come into effect on 1 January 2012.

For public cognizance, ordering the promulgation of this Minister of Finance Regulation with its placement in the State Gazette Republic of Indonesia.

Enacted in Jakarta
on December 28, 2011
MINISTER OF FINANCE,

s/b

AGUS D.W. MARTOWARDOJO

Promulgated in Jakarta
on December 28, 2011
MINISTER OF LAW AND HUMAN RIGHTS,

s/b

AMIR SYAMSUDIN

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2011
NUMBER 945

Copy is made in accordance with the original

HEAD OF GENERAL BUREAU

u.b.

HEAD OF ADMINISTRATION SECTION MINISTRY
GIARTO
NIP 195904201984021001

Attachment

EXAMPLES OF CALCULATION FOR INDIRECT HEAD OFFICE COST ALLOCATION WHICH CAN BE RECOVERABLE FOR CALCULATING THE PRODUCTION SHARING AND INCOME TAX OF THE OIL AND GAS CONTRACTOR

1. Example to calculate Indirect Head Office Cost Allocation during Exploration stage:

   Topaz Ltd is an upstream Oil and Gas company established in X country.

   In 2011, Topaz Ltd is awarded the tender offer for the Bima Oil and Gas Block at Java sea. Topaz Ltd then established Topaz Bima Ltd in Z Country and registered Topaz Bima Ltd Permanent Establishment (“BUT Topaz Bima Ltd”) in Foreign Entity and Individual II (“Badora II”) Tax Office. Topaz Bima Ltd signed the contract with BP Migas in 2011.

   In 2015, Topaz Ltd obtained approval from BP Migas for the first Plan of Development (“POD”) in the Bima Block.

   Below is the Indirect Head Office Cost Allocation data of BUT Topaz Bima Ltd during Exploration stage (2011 to 2015):

Year	% Indirect Head Office Cost Allocation	Total Spending	Indirect Head Office Cost Allocation
2011	2.00%	$100,000,000.00	$2,000,000.00
2012	4.00%	$180,000,000.00	$7,200,000.00
2013	1.00%	$250,000,000.00	$2,500,000.00
2014	3.00%	$200,000,000.00	$6,000,000.00
2015	2.00%	$220,000,000.00	$4,400,000.00
Total		**$950,000,000.00**	**$22,100,000.00**

   a) The audit is conducted prior to the POD approval:

      In 2013, there is an audit instruction for BUT Topaz Bima Ltd for 2012 fiscal year.

      Based on the audit result, there is no correction for the total spending. Therefore the Indirect Head Office Cost Allocation that is allowed to be deduction against gross income in 2012 for BUT Topaz Bima Ltd is US$7,200,000 (4% X US$180,000,000.00).

      Although the Indirect Head Office Cost Allocation that is allowed to be deduction in 2012 (US$7,200,000) is more than 2%, i.e. 4%, the audit team did not make any correction as the 2% maximum limit for Exploration stage is not on annual basis, but it is calculated from the total spending during Exploration stage (any correction/ adjustment should be made at the last year of the Exploration stage).

   b) The Audit is performed during the year when the POD is approved:

      In 2016, there is an audit instruction for BUT Topaz Bima Ltd for 2015 fiscal year.

      The Indirect Head Office Cost Allocation that is allowed as a deduction against gross income in 2015 is as follows:

Total Indirect Head Office Cost Allocation based on the Contractor = $22,100,000.00

The maximum Indirect Head Office Cost Allocation claimed during Exploration stage
2% x $950,000,000.00 = $19,000,000.00

Based on the above calculation, the Indirect Head Office Cost Allocation that is allowed as a deduction during Exploration stage is the maximum limit, i.e. US$19,000,000.00

Adjustment (correction) of the Indirect Head Office Cost Allocation for 2015 for the entire Exploration stage is as follow:

Indirect Head Office Cost Allocation based on the Contractor = $22,100,000.00
The maximum Indirect Head Office Cost Allocation claimed during Exploration stage = ($19,000,000.00)
Correction = $3,100,000.00

Therefore, the Indirect Head Office Cost Allocation during 2015 is as follows:

Indirect Head Office Cost Allocation based on the Contractor = $4,400,000.00
Indirect Head Office Cost Allocation correction = ($3,100,000.00)
Indirect Head Office Cost Allocation which is allowed as deduction = $1,300,000.00

Below is the summary of Indirect Head Office Cost Allocation of BUT Topaz Bima Ltd during Exploration stage (2011 to 2015):

Year	% Indirect Head Office Cost Allocation	According to Contractor		According to Audit Result	
		Total Spending	Indirect Head Office Cost Allocation Realisation	Total Spending	Indirect Head Office Cost Allocation
2011	2.00%	$100,000,000.00	$2,000,000.00	$100,000,000.00	$2,000,000.00
2012	4.00%	$180,000,000.00	$7,200,000.00	$180,000,000.00	$7,200,000.00
2013	1.00%	$250,000,000.00	$2,500,000.00	$250,000,000.00	$2,500,000.00
2014	3.00%	$200,000,000.00	$6,000,000.00	$200,000,000.00	$6,000,000.00
2015	2.00%	$220,000,000.00	$4,400,000.00	$220,000,000.00	$1,300,000.00
Total		**$950,000,000.00**	**$22,100,000.00**	**$950,000,000.00**	**$19,000,000.00**

c) In the case where Indirect Head Office Cost Allocation before POD has exceeded 2% of the total spending during Exploration stage:

If the Indirect Head Office Cost Allocation of BUT Topaz Ltd (for the above example) is 5% for 2014, the Indirect Head Office Cost Allocation for 2014 becomes US$10,000,000.00 and the total of Indirect Head Office Cost Allocation of BUT Topaz Ltd during Exploration stage becomes US$26,100,000.00. In this case, the Indirect Head Office Cost Allocation that is allowed as a deduction during the Exploration stage is the maximum limit, i.e. US$19,000,000.00

Adjustment (correction) of the Indirect Head Office Cost Allocation for 2015 for the entire Exploration stage is as follow:

Total Indirect Head Office Cost Allocation based on the Contractor = $26,100,000.00
The maximum Indirect Head Office Cost Allocation claimed during Exploration stage = ($19,000,000.00)
Correction = $7,100,000.00

Therefore, the Indirect Head Office Cost Allocation during 2015 is as follows:

Indirect Head Office Cost Allocation based on the Contractor = $4,400,000.00
Indirect Head Office Cost Allocation correction = ($7,100,000.00)
Indirect Head Office Cost Allocation which is allowed as a deduction = ($2,700,000.00)

Below is the summary of Indirect Head Office Cost Allocation of BUT Topaz Bima Ltd during Exploration stage (2011 to 2015):

Year	% Indirect Head Office Cost Allocation	According to Contractor		According to Audit Result	
		Total Spending	Indirect Head Office Cost Allocation Realisation	Total Spending	Indirect Head Office Cost Allocation
2011	2.00%	$100,000,000.00	$2,000,000.00	$100,000,000.00	$2,000,000.00
2012	4.00%	$180,000,000.00	$7,200,000.00	$180,000,000.00	$7,200,000.00
2013	1.00%	$250,000,000.00	$2,500,000.00	$250,000,000.00	$2,500,000.00
2014	5.00%	$200,000,000.00	$10,000,000.00	$200,000,000.00	$10,000,000.00
2015	2.00%	$220,000,000.00	$4,400,000.00	$220,000,000.00	(2,700,000.00)
Total		**$950,000,000.00**	**$26,100,000.00**	**$950,000,000.00**	**$19,000,000.00**

d) In the case where there is a correction on the total spending during Exploration stage:

Please assume that the total spending of BUT Topaz Ltd follows the above example. Based on audit result, there is correction during 2012 of US$30,000,000.00. The total spending in 2012 therefore decreases from US$180,000,000.00 to US$150,000,000.00. In this case, the Indirect Head Office Cost Allocation that is allowed as deduction during Exploration stage is as follow:

2012
The Indirect Head Office Cost Allocation that is allowed as deduction in 2012:
4% x US$150,000,000.00 = US$6,000,000.00

Therefore, there is a correction for Indirect Head Office Cost Allocation in 2012 as follows:

Indirect Head Office Cost Allocation based on the Contractor = $7,200,000.00
The maximum Indirect Head Office Cost Allocation based on audit result = ($6,000,000.00)
Correction = $1,200,000.00

2015
The Indirect Head Office Cost Allocation that is allowed as a deduction in 2015 is as follow:

Indirect Head Office Cost Allocation based on PSC Contractor = $22,100,000.00

The maximum Indirect Head Office Cost Allocation claimed during Exploration stage
2% x ($950,000,000.00 – $30,000,000.00) = ($18,400,000.00)

Based on the above, the Indirect Head Office Cost Allocation that is allowed as a deduction during Exploration stage is the maximum limit, i.e. US$18,400,000.00

Adjustment (correction) of the Indirect Head Office Cost Allocation for 2015 for the entire Exploration stage is as follow:

Indirect Head Office Cost Allocation based on the Contractor	= $22,100,000.00
The maximum Indirect Head Office Cost Allocation claimed during Exploration stage	= ($18,400,000.00)
Correction	= $3,700,000.00
Indirect Head Office Cost Allocation correction in 2012 based on audit result	= ($1,200,000.00)
Indirect Head Office Cost Allocation correction in 2015 after audit result	= $2,500,000.00

Therefore, the Indirect head office Cost Allocation in 2015 is as follows:

Indirect Head Office Cost Allocation based on the Contractor	= $4,400,000.00
Indirect Head Office Cost Allocation correction	= ($2,500,000.00)
Indirect Head Office Cost Allocation which is allowed as deduction	= $1,900,000.00

Below is the summary of Indirect Head Office Cost Allocation of BUT Topaz Bima Ltd during Exploration stage (2011 to 2015):

Year	% Indirect Head Office Cost Allocation	According to Contractor		According to Audit Result	
		Total Spending	Indirect Head Office Cost Allocation Realisation	Total Spending	Indirect Head Office Cost Allocation
2011	2.00%	$100,000,000.00	$2,000,000.00	$100,000,000.00	$2,000,000.00
2012	4.00%	$180,000,000.00	$7,200,000.00	$150,000,000.00	$6,000,000.00
2013	1.00%	$250,000,000.00	$2,500,000.00	$250,000,000.00	$2,500,000.00
2014	3.00%	$200,000,000.00	$6,000,000.00	$200,000,000.00	$6,000,000.00
2015	2.00%	$220,000,000.00	$4,400,000.00	$220,000,000.00	1,900,000.00
Total		**$950,000,000.00**	**$22,100,000.00**	**$920,000,000.00**	**$18,400,000.00**

e) In the case that Indirect Head Office Cost Allocation is lower than 2% during Exploration stage:

Below is the Indirect Head Office Cost Allocation data to BUT Topaz Bima Ltd during Exploration stage (2011 to 2015):

Year	% Indirect Head Office Cost Allocation	Total Spending	Indirect Head Office Cost Allocation
2011	1.8%	$100,000,000.00	$1,800,000.00
2012	1.7%	$180,000,000.00	$3,060,000.00
2013	2.0%	$250,000,000.00	$5,000,000.00
2014	2.2%	$200,000,000.00	$4,400,000.00
2015	1.9%	$220,000,000.00	$4,180,000.00
Total		**$950,000,000.00**	**$18,440,000.00**

The maximum Indirect Head Office Cost Allocation claimed during Exploration stage
2% x $950,000,000.00= $19,000,000.00

Based on the above calculation, the Indirect Head Office Cost Allocation that is allowed as a deduction during Exploration stage is US$18,040,000,000.00 and so, no adjustment (correction) in 2015 on the Indirect Head Office Cost Allocation.

2. Example to calculate Indirect Head Office Cost Allocation during Exploitation stage:

To claim Indirect Head Office Cost Allocation in Exploitation stage, Contractors have to submit the following:

a) the written approval of Indirect Head Office Cost Allocation method by the Executive Board in the event where the detailed study has been performed by the Executive Board; or

b) the proposal of Indirect Head Office Cost Allocation method that has been declared complete by the Executive Board in the event where the detailed study has not been performed by the Executive Board.

In terms of the above requirements are not fulfilled, the Contractor is not allowed to treat the Indirect Head Office Cost Allocation as a deduction.

a) The Exploitation stage upon the enactment of this Regulation:

In 2015, a Taxpayer submitted WP&B for 2016 including the proposed method for Indirect Head Office Cost Allocation. A written approval from BP Migas is obtained for 2% starting from year 2016 onwards unless there is a change on the methodology of the Indirect Head Office Cost Allocation.

In 2016, BUT Topaz Ltd entered into production. Below is the Indirect Head Office Cost Allocation data of BUT Topaz Bima Ltd during Exploitation stage (2016 to 2010):

Year	% Indirect Head Office Cost Allocation	Total Spending	Indirect Head Office Cost Allocation
2016	2%	$100,000,000.00	$2,000,000.00
2017	4%	$180,000,000.00	$7,200,000.00
2018	1%	$250,000,000.00	$2,500,000.00
2019	3%	$200,000,000.00	$6,000,000.00
2020	2%	$220,000,000.00	$4,400,000.00
Total		**$950,000,000.00**	**$22,100,000.00**

The Indirect Head Office Cost Allocation spending that allowed as deduction of gross income for BUT Topaz Bima Ltd is as follows:

Year	According to PSC Contractor			BP Migas Approval			Auditor *)
	% Indirect Head Office Allocation Expenditure	Total Spending (Realisation)	Indirect Head Office Cost Allocation	% Approved	Total Spending (Approved)	Indirect Head Office Cost Allocation	Indirect Head Office Allocation
2016	2.00%	$100,000,000.00	$2,000,000.00	2.00%	$100,000,000.00	$2,000,000.00	$2,000,000.00
2017	4.00%	$180,000,000.00	$7,200,000.00	2.00%	$180,000,000.00	$3,600,000.00	$3,600,000.00
2018	1.00%	$250,000,000.00	$2,500,000.00	1.00%	$250,000,000.00	$2,500,000.00	$2,500,000.00
2019	3.00%	$200,000,000.00	$6,000,000.00	2.00%	$200,000,000.00	$4,000,000.00	$4,000,000.00
2020	2.00%	$220,000,000.00	$4,400,000.00	2.00%	$220,000,000.00	$4,400,000.00	$4,400,000.00

Notes:

*) If there is a correction for the total spending (cost recovery correction), the Indirect Head Office Cost Allocation that is allowed as a deduction is 2% at maximum from the total spending upon audit correction.

b) The Exploitation stage prior to the enactment of this Regulation:

Zircon Ltd. is an upstream Oil and Gas company established in X country.

In 2001, Zircon Ltd wins Bima Oil and Gas Block at Java sea tender offer. Zircon Ltd then established Zircon Bima Ltd in Z country and registered Zircon Bima Ltd Permanent Establishment (“BUT Zircon Bima”) in Badora II Tax Office.

BUT Zircon Bima Ltd signed the contract with BP Migas in 2001. In 2010, BUT Zircon Ltd entered into production.

Below is the Indirect Head Office Cost Allocation data of BUT Zircon Bima Ltd during the Exploration stage (Year 2010 to 2015):

Year	% Indirect Head Office Cost Allocation	Total Spending	Indirect Head Office Cost Allocation
2010	1.80%	$200,000,000.00	$3,600,000.00
2011	2.00%	$220,000,000.00	$4,400,000.00
2012	2.00%	$250,000,000.00	$5,000,000.00
2013	2.00%	$300,000,000.00	$6,000,000.00
2014	2.00%	$350,000,000.00	$7,000,000.00
2015	2.00%	$300,000,000.00	$6,000,000.00

In 2011, the Taxpayer submitted the WP&B for 2012 and has been approved by BP Migas with no remarks.

In 2012, the Taxpayer submitted the WP&B for 2013 and has been approved by BP Migas with remarks that Indirect Head Office Cost Allocation for 2013 will be adjusted upon a detailed study from BP Migas. After the detailed study in 2014, BP Migas agreed that of the Indirect Head Office Cost Allocation should be 1.8% and it will come into effect in 2013.

The Indirect Head Office Cost Allocation that is allowed as a deduction against gross income for BUT Zircon Bima Ltd is therefore as follows:

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Year	According to Contractor			BP Migas Approval			Auditor *)
	% Indirect Head Office Allocation Expenditure	Total Spending (Realisation)	Indirect Head Office Cost Allocation	% Approved	Total Spending (Approved)	Indirect Head Office Cost Allocation	Indirect Head Office Allocation
2010	1.80%	$200,000,000.00	$3,600,000.00	1.80%	$200,000,000.00	$3,600,000.00	$3,600,000.00
2011	2.00%	$220,000,000.00	$4,400,000.00	2.00%	$220,000,000.00	$4,400,000.00	$4,400,000.00
2012	2.00%	$250,000,000.00	$5,000,000.00	2.00%	$250,000,000.00	$5,000,000.00	$5,000,000.00
2013	2.00%	$300,000,000.00	$6,000,000.00	1.80%	$300,000,000.00	$5,400,000.00	$5,400,000.00
2014	2.00%	$350,000,000.00	$7,000,000.00	1.80%	$350,000,000.00	$6,300,000.00	$6,300,000.00
2015	2.00%	$300,000,000.00	$6,000,000.00	1.80%	$300,000,000.00	$5,400,000.00	$5,400,000.00

Notes:
*) If there is a correction for the total spending (cost recovery correction), the Indirect Head Office Cost Allocation that is allowed as a deduction against the gross income is 2% at maximum (for 2011 to 2012) or based on the BP Migas written approval (i.e. 1.8% starting 2013) from the total spending upon audit correction.

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MINISTER OF FINANCE

s/b

AGUS D.W. MARTOWARDOJO

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