

-PwC Unofficial English Translation-

MINISTER OF FINANCE

REPUBLIC OF INDONESIA

MINISTRY OF FINANCE REPUBLIC OF INDONESIA REGULATION
NUMBER 257/PMK.011/2011

CONCERNING

PROCEDURES FOR WITHHOLDING AND REMITTANCE OF INCOME TAX ON
CONTRACTOR'S OTHER INCOME IN THE FORM OF *UPLIFT* OR OTHER SIMILAR
COMPENSATION AND/OR CONTRACTOR'S INCOME FROM TRANSFER OF
PARTICIPATING INTEREST

BY THE GRACE OF GOD ALMIGHTY

MINISTER OF FINANCE REPUBLIC OF INDONESIA

Considering: that in order to implement provision of Article 27 paragraph (4) of Government Regulation Number 79 Year 2010 regarding Cost Recovery and Treatment for Income Tax in the Upstream Oil and Gas Business Sector, it is necessary to stipulate a Minister of Finance Regulation regarding Procedures for Withholding and Remittance of Income Tax on Contractor's Other Income in the Form of *Uplift* or Other Similar Compensation and/or Contractor's Income from Transfer of *Participating Interest*;

In view of:

1. Law Number 6 Year 1983 on the General Provisions and Tax Procedures (State Gazette of the Republic of Indonesia Year 1983 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 3262) as lastly amended by Law Number 16 Year 2009 (State Gazette of the Republic of Indonesia Year 2009 Number 62, Supplement to the State Gazette of the Republic of Indonesia Number 4999);
2. Law Number 7 Year 1983 on Income Tax (State Gazette of the Republic of Indonesia Year 1983 Number 50, Supplement to the State Gazette of the Republic of Indonesia Number 3263) as lastly amended by Law Number 36 Year 2008 (State Gazette of the Republic of Indonesia Year 2008 Number 133, Supplement to the State Gazette of the Republic of Indonesia Number 4893);
3. Government Regulation Number 79 Year 2010 regarding Cost Recovery and Treatment for Income Tax in the Upstream Oil and Gas Business Sector (State Gazette of the Republic of Indonesia Year 2000 Number 139, Supplement to the State Gazette of the Republic of Indonesia Number 5173);
4. Presidential Decree Number 56/P Year 2010;

DECIDES

To stipulate: MINISTER OF FINANCE REGULATION REGARDING PROCEDURES FOR WITHHOLDING AND REMITTANCE OF INCOME TAX ON CONTRACTOR'S OTHER INCOME IN THE FORM OF *UPLIFT* OR OTHER SIMILAR COMPENSATION AND/OR CONTRACTOR'S INCOME FROM TRANSFER OF *PARTICIPATING INTEREST*.

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Article 1

In this Minister of Finance Regulation what is meant by:

1. Income Tax Law is Law Number 7 Year 1983 on Income Tax as lastly amended by Law Number 36 Year 2008.
2. 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 with the Executive Board.
3. *Uplift* means compensation received by Contractor in relation to the provision of funds to finance production sharing contract operations which should have been the participatory obligations of the other Contractor, within one Cooperation Contract, for the purpose of financing.
4. *Participating Interest* means the rights and obligations as Cooperation contract Contractor, either directly or indirectly within a work area.
5. Exploration means activities with the objective to obtain information on geological condition in order to locate and obtain estimated Oil and Natural Gas reserves in a designated work area.
6. Exploitation means a series of activities with the objective to produce Oil and Natural Gas in a designated work area, consisting of drilling and well completion, construction of facilities for transportation, storage, and field processing for separation and refining of Oil and Natural Gas and other supporting activities.

Article 2

- (1) Contractor's other income in the form of *uplift* or other similar compensations shall be subject to a final income tax at 20% of the gross amount
- (2) Contractor's other income from transfer of *participating interest* shall be subject to a final income tax at the following rates:
 - a. 5% (five percent) from gross amount, for transfer of *participating interest* during Exploration period; or
 - b. 7% (seven percent) from gross amount, for transfer of *participating interest* during Exploitation period.
- (3) Exploration period as referred to in paragraph (2) letter a commences from the effective date the cooperation contract become effective up to the approval date of the first Plan of Development in a Contractor's work area.
- (4) Exploitation period as referred to in paragraph (2) letter b commences from the expiration of the Exploration period as referred to in paragraph (3) up to the expiration date of the cooperation contract.

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Article 3

- (1) For risk sharing purposes during the Exploration period, the transfer of *Participating Interest* is excluded from the imposition of Income Tax as referred to in Article 2 paragraph (2) letter a, if the following criteria are met:
 - a. Not transferring all of its *Participating Interest*;
 - b. The *Participating Interest* has been held for more than 3 (three) years;
 - c. Exploration has been conducted in the work area and Contractor has incurred investment expenditure to perform the said Exploration; and
 - d. The transfer of *Participating Interest* by the Contractor is not meant for gaining any profits.
- (2) The imposition of Income Tax as referred to in Article 2 paragraph (2) letter b, will be exempted if the transfer is carried out to fulfil the transfer of *Participating Interest* obligation under the cooperation contract to a National company.

Article 4

The Tax Imposition Base for a transfer of *Participating Interest* as referred to in Article 2 paragraph (2) is:

- a. the amount actually received or earned by Contractor;
- b. the amount that should be received or earned by Contractor, in the case there is a special relationship as meant in Article 18 paragraph (4) of Income Tax Law between parties conducting the transfer of *Participating Interest*.

Article 5

- (1) In the event of transfer of *Participating Interest*, Contractor must report the value of the said transfer of *Participating Interest* to the Tax Office where the Contractor is registered by attaching written documents which are the *Participating Interest* transfer agreement and the latest *Financial Quarterly Report* (FQR) issued prior to the transfer of *Participating Interest*.
- (2) In the case that the provision referred to in paragraph (1) cannot be met by the Contractor, the Director General of Tax by its discretion can deem the value of the of *Participating Interest transfer*.
- (3) Reporting as referred to in paragraph (1) shall be carried out by:
 - a. The Contractor acquiring the transferred *Participating Interest* if it has been registered as Taxpayer; or
 - b. The Contractor who transfers the *Participating Interest* if the contractor acquiring the transferred *Participating Interest* has not been registered as Taxpayer.

by using the form template for reporting the transfer of *Participating Interest* as provided in Attachment I, which is inseparable from this Minister of Finance Regulation.

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- (4) Contractor as referred to in paragraph (3) must report the value of the transfer of *Participating Interest* as referred to in paragraph (1) within 14 (fourteen) working days (at the latest) since the signing of the *Participating Interest* transfer agreement.

Article 6

- (1) The due date of Income Tax on *Uplift* or other similar compensations as referred to in Article 2 paragraph (1) is when income in the form of *Uplift* or other similar compensations is paid or accrued as an expense, whichever is earlier.
- (2) Income Tax as referred to in Article 2 paragraph (1) must be withheld by the Contractor who pays the *Uplift* or other similar compensations by using the Withholding Tax Slip form template provided in Attachment II, which is inseparable from this Minister of Finance Regulation.

Article 7

- (1) The due date of Income Tax on the transfer of *Participating Interest* as referred to in Article 2 paragraph (2) is when the payment is made, or when the *Participating Interest* is transferred, or when the Minister of Energy and Mineral Resources approval for the transfer of *Participating Interest* is granted, whichever is earlier.
- (2) Income Tax as referred to in Article 2 paragraph (2) must be withheld by the Contractor who acquires the *Participating Interest* by using the Withholding Tax Slip form template provided in Attachment II, which is inseparable with this Minister of Finance Regulation.
- (3) In the case that the Contractor who acquires the *Participating Interest* as referred to in paragraph (2) has not yet been registered as Taxpayer when the Income Tax is due as referred to in paragraph (1), the Income Tax due must be self-remitted by the Contractor acquiring the *Participating Interest* by using a Tax Payment Slip in the name of the Contractor who transfers the *Participating Interest*.
- (4) In the case that the Income Tax due is not remitted by the Contractor acquiring the *Participating Interest* as referred to in paragraph (3), the Income Tax due must be withheld, remitted, and reported by the Contractor acquiring the *Participating Interest* upon being registered as Taxpayer in accordance with the tax law.
- (5) In the case of an indirect transfer of *Participating Interest* and the Tax Identification Number (NPWP) does not change, the Contractor transferring the *Participating Interest* must self-remmit the Income Tax due using Tax Payment Slip.

Article 8

Income Tax as referred to in Article 6 paragraph (2) and/or Article 7 paragraph (2), paragraph (3), paragraph (4), and paragraph (5), must be remitted to the State Treasury, in accordance with the deadline stipulated under Minister of Finance Regulation which regulates the determination of the deadline for payment, remittance, withholding, collecting, and/or reporting of tax.

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Article 9

- (1) Income Tax remitted as referred in to Article 8 must be reported to:
 - a. Tax Office where the Contractor making the *Uplift* or other similar compensations payment is registered, on payment as referred to in Article 6 paragraph (2);
 - b. Tax Office where the Contractor acquiring the *Participating Interest* is registered, on payment as referred to in Article 7 paragraph (2) and paragraph (4); and/or
 - c. Tax Office where the Contractor transferring the *Participating Interest* is registered, on payment as referred to in Article 7 paragraph (3) and paragraph (5).
- (2) The reporting of Income Tax remitted as referred to in paragraph (1) shall be done in accordance with the deadline stipulated under Minister of Finance Regulation which regulates the deadline for payment, remittance, withholding, collecting, and/or reporting of tax by using monthly Article 4(2) Final Tax Return on the other income section.

Article 10

- (1) Taxable Income after being deducted by Final Income Tax from *Uplift* or other similar compensations as referred to in Article 2 paragraph (1) and/or Contractor's income from transfer of *Participating Interest* as referred to in Article 2 paragraph (2), shall be imposed with Income Tax in accordance with the prevailing Income Tax Laws and its implementing regulations.
- (2) The Income Tax treatment on the Contractor's other income which is not specifically regulated in this Minister Regulation, shall follow the prevailing Income Tax Laws and its implementing regulations.

Article 11

The calculation of Income Tax as referred to in Article 2, Article 3 and Article 10 paragraph (1) shall be made based on the example provided in Attachment III, which is inseparable from this Minister of Finance Regulation.

Article 12

- (1) Provision regarding the due date of Income Tax as referred to in Article 6 paragraph (1) and Article 7 paragraph (1) is not applied to income in the form of *Uplift* or other similar compensations and income from transfer of *Participating Interest*, which occurred from 20 December 2010 up to the effective date of this Minister of Finance Regulation.
- (2) The due date of Income Tax on income in the form of *Uplift* or other similar compensations and income from transfer of *Participating Interest* as referred to in paragraph (1) is the effective date of this Minister of Finance Regulation.
- (3) Provision as referred to in Article 10 paragraph (1) is applied to Taxable Income after Final Income Tax from *Uplift* or other similar compensations as referred to in Article 2 paragraph (1) and/or income from transfer of *Participating Interest* which is received or earned after the effective date of this Minister of Finance Regulation.

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Article 13

This Minister of Finance Regulation shall come into effect as of 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 REPUBLIC OF INDONESIA YEAR 2011 NUMBER 946
Copy is made in accordance in accordance with the original
HEAD OF GENERAL BERAU

HEAD OF MINISTRY ADMINISTRATION

s/b

GIARTO
NIP 195904201984021001

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ATTACHMENT II

WITHHOLDING TAX SLIP FORM TEMPLATE

Attachment 1 : Tax Payer
Attachment 2 : Tax Office
Attachment 3 : Tax Withholder/Tax Collector



DEPARTMENT OF FINANCE REPUBLIC OF INDONESIA
DIRECTORATE GENERAL OF TAX
TAX SERVICES OFFICE

**INCOME TAX ARTICLE 4(2) WITHHOLDING TAX SLIP ON
CONTRACTOR'S OTHER INCOME IN THE FORM OF UPLIFT OR OTHER
SIMILAR INCOME AND/OR CONTRACTOR'S INCOME FROM
PARTICIPATING INTEREST TRANSFER**

Number :

Tax ID Number : - - - - -

Name :

Address :

Block Name/
Working Area :

| No. | Income Description | Amount of Gross Income (Rp) | Rate (%) | Income tax Withheld (Rp) |
|--------------|--|-----------------------------|----------|--------------------------|
| (1) | (2) | (3) | (5) | (6) |
| 1. | Uplift or Other Similar Income | | 20% | |
| 2. | Participating Interest Transfer during Exploration period | | 5% | |
| 3. | Participating Interest Transfer during Exploitation period | | 7% | |
| TOTAL | | | | |

In word :

.....20....

Tax Withholder/Tax Collector

Tax ID :

Name :

Note :

- The amount of Income Tax and other Contractor's income in the form of Uplift or other similar income and/or Contractor's income from transfer of Participating Interest that withheld/collected as a above is not a Tax Credit in Annual Corporate Income Tax Return
- This Withholding Income Tax Slip is valid if filled-in completely and accurately

SIGNATURE, NAME AND STAMP

.....

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ATTACHMENT II

GUIDANCE TO FILL-IN THE FORM
ARTICLE 4 PARAGRAPH (2) INCOME TAX WITHHOLDING TAX SLIP
ON CONTRACTOR'S OTHER INCOME IN THE FORM OF UPLIFT OR OTHER SIMILAR
COMPENSATION AND/OR CONTRACTOR'S INCOME FROM TRANSFER OF
PARTICIPATING INTEREST

General Guidelines:

This withholding tax slip using the format readable with scanner machine, therefore the following matter should be taken into attention:

- If Taxpayer prepare this Withholding Tax slip on their own, do not forget to make the ■ symbol (black square) on the four corners of the paper as the boundary so the documents can be scanned.
- The paper should be in F4/Folio (8.5 x 13 inch) size with minimum weight of 70 gram.
- The paper should not be folded or crumpled.
- Identity column:
For taxpayer who fills-in the form by computer or in writing, all of the identity information should be written in the available squares.

For Taxpayer who fills the form by typewriter, the Tax ID Number should be written in the squares, while the Taxpayer's name and address can be written by ignoring the squares but should not exceed the rightmost square.

Example : Name

| | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|--|--|--|--|
| A | M | I | R | D | A | W | I | J | A | K | U | S | U | M | A | S | A | N | T | I | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|--|--|--|--|

- The rupiah or US dollar column should be filled without decimal value.

Example : for writing ten million rupiah is : 10.000.000 (not 10.000.000,00)
for writing a hundred twenty five rupiah and fifty cent is : 125 (not 125.50)

- (1) Filled with the name of the Tax Office (KPP).
- (2) Filled with the Withholding Tax Slip Number according to the order made by the Tax Withholder.
- (3) Filled with the Taxpayer Identity:
 - Contractor acquiring the income in regard to other income in the form of uplift or other similar compensation;
 - Contractor who transfers the *Participating Interest* if the contractor acquiring the transferred *Participating Interest* has not been registered as Taxpayer; or
 - Contractor acquiring the *Participating Interest* if the Contractor acquiring the *Participating Interest*
- (4) Filled with the date of the preparation of the Withholding Tax Slip.
- (5) Filled with the Tax Withholder identity.
- (6) Filled with signature, name, and stamp of the Tax Withholder.

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Specific Guidelines

This withholding tax slip is prepared by the Tax Withholder when the income is received or earned.

This Withholding Tax Slip is prepared triplicate, as follows:

- First Sheet : For the receiver of income
Second Sheet : For The Tax Office as attachment when the submission of Article 4(2) Income Tax Return
Third Sheet : For the party who made the payment
- 1st Column : **number**, self-explanatory
2nd Column : **type of income (uplift or other similar remuneration and/or transfer of Participating Interest)**
3rd Column : **Gross income**
4th Column : **Tariff**
a. 20% for *uplift* or other similar compensation
b. 5% for transfer of *Participating Interest* at the time of exploration
c. 7% for transfer of *Participating Interest* at the time of exploitation
5th column : **Income Tax Withheld**
Filed by the income tax withheld i.e. in the amount of gross value x tariff
Said : filled by Income Tax amount

MINISTER OF FINANCE

s/b

AGUS D.W. MARTOWARDOJO

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ATTACHMENT III

**EXAMPLES OF TAX CALCULATION FOR CONTRACTORS' INCOME IN THE FORM OF
UPLIFT OR ANY OTHER SIMILAR COMPENSATION**

1. The tax calculation example for contractor's income in the form of *Uplift* or any other similar compensation:

Alpha Ltd, a company established in country X, is engaged in oil and gas mining industry.

Beta Pty Ltd, a company established in country Y, is engaged in oil and gas mining industry.

In 2004 Alpha Ltd and Beta Pty Ltd were rewarded with the Arjuna Block in Java Sea. Alpha Ltd established Alpha Arjuna Ltd in country Z (not a tax treaty partner) and Beta Pty Ltd established Beta Arjuna Ltd in country Z. Both companies then established Permanent Establishment (PE) and registered in the Foreign Entities and Individuals II Tax Service Office. Each PE holds 50% *interest* in Arjuna Block.

In the oil and gas cooperation contract, it is stipulated that if a financial difficulty is experienced by one of the contractor, the relevant participation obligation will be covered by the other contractor and the contractor being covered will pay *Uplift* to the contractor providing the fund.

BUT Beta Arjuna Ltd experienced a financial liquidity problem thus the Exploration cost from 2004 to 2010 was paid by BUT Alpha Arjuna Ltd. In 2011 the Arjuna Block entered into production. On the fund, BUT Alpha Arjuna Ltd received *Uplift* from BUT Beta Arjuna Ltd amounting US\$10,000,000.00 paid in December 2012.

Based on the information, the Final Income Tax calculation for *Uplift* income received by BUT Alpha Arjuna Ltd is as follows:

Final Income Tax = 20% x US\$10,000,000.00 = US\$2,000,000.00

(withheld by BUT Beta Arjuna Ltd and BUT Beta Arjuna Ltd must provide BUT Alpha Arjuna Ltd with the withholding tax slip)

The Article 26 paragraph (4) Income Tax calculation on the taxable income after Final Income Tax from *Uplift* is as follows:

| | |
|---|----------------------------|
| <i>Uplift</i> income | = US\$10,000,000.00 |
| Cost related to <i>Uplift</i> | = <u>US\$ 2,000,000.00</u> |
| Taxable Income | = US\$ 8,000,000.00 |
| Final income tax | = <u>US\$ 2,000,000.00</u> |
| Article 26 (4) Income Tax base on uplift income | = US\$ 6,000,000.00 |
| Article 26 (4) Income Tax payable (20% x US\$6,000,000.00) | <u>US\$ 1,200,000.00</u> |

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2. The tax calculation example for transfer of *Participating Interest* transaction:

- Charlie Ltd, a company established in country X, is engaged in oil and gas mining industry.
- Delta Pty Ltd, a company established in country Y, is engaged in oil and gas mining industry. Delta Pty Ltd established a Special Purpose Vehicle (SPV) Company Delta Pty. Ltd. in country Z and registered BUT Delta Pty Ltd in the Foreign Entities and Individuals II Tax Service Office.
- In 2009, Charlie Ltd is rewarded with Bima Block in Java Sea. Charlie Ltd established Charlie Bima Ltd in country Z and registered BUT Charlie Bima Ltd in the Foreign Entities and Individuals II Tax Service Office. In 2009, BUT Charlie Bima Ltd signed the production sharing contract with Upstream Oil and Gas Executive Agency (BPMIGAS) and holds 100% *interest* in Bima Block. Country X, Y, and Z are non-tax treaty countries.

a. *Direct transfer of Participating Interest*

1) during Exploration period:

In 2011, BUT Charlie Bima Ltd transferred 50% *interest* in Bima Block to BUT Delta Pty Ltd with transaction amount of US\$20,000,000.00.

The income tax calculation payable by BUT Charlie Bima Ltd is as follows:

Final income tax = 5% x US\$20,000,000.00 = US\$1,000,000.00

(withheld by BUT Delta Pty Ltd and BUT Delta Pty Ltd must provide BUT Charlie Bima Ltd with the withholding tax slip)

The Article 26 paragraph (4) Income Tax calculation on the taxable income after Final Income Tax from transfer of *Participating Interest* is as follows:

| | |
|--|----------------------------|
| Income from transfer of <i>Participating Interest</i> | = US\$20,000,000.00 |
| Cost incurred | = <u>US\$16,000,000.00</u> |
| Taxable Income | = US\$ 4,000,000.00 |
| Final income tax | = <u>US\$ 1,000,000.00</u> |
| Article 26 (4) Income Tax base | = US\$ 3,000,000.00 |
| Article 26 (4) Income Tax payable (20%xUS\$3,000,000.000) | <u>US\$ 600,000.00</u> |

2) During Exploitation period:

Bima Block starts producing in 2015 and in 2016 BUT Charlie Bima Ltd transfers again to BUT Delta Pty Ltd the 10% *interest* in Bima Block with transaction amount of US\$20,000,000.00, thus the final income tax calculation

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payable by BUT Charlie Bima Ltd for the transfer of *interest* transaction, is as follows:

Final income tax = 7% x US\$20,000,000.00 = US\$1,400,000.00

(withheld by BUT Delta Pty Ltd and BUT Delta Pty Ltd must provide BUT Charlie Bima Ltd with the withholding tax slip)

The Article 26 paragraph (4) Income Tax calculation on the taxable income after Final Income Tax from transfer of *Participating Interest* is as follows:

| | |
|---|----------------------------|
| Income from transfer of <i>Participating Interest</i> | = US\$20,000,000.00 |
| Cost incurred (excluding cost already recovered by the Government) | = <u>US\$14,400,000.00</u> |
| Taxable income | = US\$ 5,600,000.00 |
| Final income tax | = <u>US\$ 1,400,000.00</u> |
| Article 26 (4) Income Tax base | = US\$ 4,200,000.00 |
| Article 26 (4) Income Tax payable (20% x US\$4,200,000.00) | <u>US\$ 840,000.00</u> |

b. *Indirect transfer of Participating Interest/transfer of shares:*

In 2017, Charlie Ltd transfers 30% *interest* in Bima Block by selling 100% shares of Charlie Bima Ltd to Gama Pty Ltd with the transaction amount of US\$20,000,000.00. Therefore Gama Pty Ltd has 30% *interest* in Bima Block through Charlie Bima Ltd (SPV company).

The sale of shares transaction is included in the definition of transfer of indirect *interest* as the *interest* transfer is in Bima Block. Even though the transaction formally is a share transfer but substantially the transaction is *interest* transfer (*substance over form*).

The Final income tax calculation payable by BUT Charlie Bima Ltd is as follows:

Final income tax = 7% x US\$20,000,000.00 = US\$1,400,000.00

(remitted by BUT Charlie Bima Pty Ltd to the State Treasury because Gama Pty Ltd has not yet registered in Indonesia)

Furthermore BUT Charlie Bima Ltd will change its name to BUT Gama Bima Ltd without any changes in tax ID number.

The Article 26 paragraph (4) Income Tax calculation on the taxable income after Final Income Tax from transfer of *Participating Interest* is as follows:

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| | |
|---|-----------------------------|
| Income from transfer of <i>Participating Interest</i> | = US\$ 20,000,000.00 |
| Cost incurred (excluding cost already recovered by the Government) | = <u>US\$ 14,400,000.00</u> |
| Taxable income | = US\$ 5,600,000.00 |
| Final income tax | = <u>US\$ 1,400,000.00</u> |
| Article 26 (4) Income Tax base | = US\$ 4,200,000.00 |
| Article 26 (4) Income Tax payable (20% x US\$4,200,000.00) | <u>US\$ 840,000.00</u> |

c. *Transfer of Participating Interest* which is exempted from Final Income Tax:

In 2018, BUT Charlie Bima Ltd sell again 10% *interest* in Bima Block to Regional Company (RC) Gemah Ripah in accordance with the obligation in the cooperation contract with transaction amount of US\$10,000,000.00.

The transfer of *interest* transaction is not imposed with Final Income Tax as it is carried out in accordance with the provisions in the cooperation contract.

d. *Transfer of Participating Interest* with percentage of production as the settlement method:

In 2018, BUT Gama Bima Ltd transfers 30% directly owned *interest* to BUT Tera Ltd with agreement as follows:

- 1) Advance payment of US\$20,000,000.00
- 2) 2% per year from the contractor's share of its oil liftings until to the end of the contract term.

In 2019 BUT Tera Ltd's liftings' share is US\$100,000,000.00

The income tax payable calculation from the transfer is as follows:

Year 2018

Final income tax = 7% x US\$20,000,000.00 = US\$1,400,000.00
(remitted by BUT Tera Ltd to the State Treasury and BUT Tera Ltd must provide BUT Gama Bima Ltd with the withholding tax slip)

The Article 26 paragraph (4) Income Tax calculation on the taxable income after Final Income Tax from transfer of *Participating Interest* is as follows:

| | |
|---|----------------------------|
| Income from transfer of <i>Participating Interest</i> | = US\$20,000,000.00 |
| Cost incurred (excluding cost already recovered by the Government) | = <u>US\$14,400,000.00</u> |
| Taxable income | = US\$ 5,600,000.00 |
| Final income tax | = <u>US\$ 1,400,000.00</u> |
| Article 26 (4) Income Tax base | = US\$ 4,200,000.00 |
| Article 26 (4) Income Tax payable (20% x US\$4,200,000.00) | <u>US\$ 840,000.00</u> |

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Year 2019

Total payment to BUT Gama Bima Ltd

$$\begin{aligned} &= 2\% \times \text{US\$}100,000,000.00 \\ &= \text{US\$}2,000,000.00 \end{aligned}$$

$$\begin{aligned} \text{Final Income Tax} &= 7\% \times \text{US\$}2,000,000.00 \\ &= \text{US\$}140,000.00 \end{aligned}$$

(remitted by BUT Tera Ltd to the State Treasury)

The Article 26 paragraph (4) Income Tax calculation on the taxable income after Final Income Tax from transfer of *Participating Interest* is as follows:

| | |
|---|---------------------------|
| Income from transfer of <i>Participating Interest</i> | = US\$2,000,000.00 |
| Cost incurred (excluding cost already recovered by the Government) | = <u>US\$1,440,000.00</u> |
| Taxable income | = US\$ 560,000.00 |
| Final income tax | = <u>US\$ 140,000.00</u> |
| Article 26 (4) Income Tax base | = US\$ 420,000.00 |
| Article 26 (4) Income Tax payable (20% x US\$420,000.00) | = <u>US\$ 84,000.00</u> |

3. Example of Income Tax exemption on transfer of *Participating Interest* transaction during exploration period:

For the purpose of risk sharing during exploration period, the transfer of *Participating Interest* is not included as income subject to Final Income Tax if it meets the following (cumulative) criteria:

- a. Not transferring all of its *Participating Interest*;
- b. *Participating Interest* has been held for more than 3 (three) years;
- c. Exploration has been conducted in the work area and Contractor has incurred investment expenditure to perform the said Exploration; and
- d. the transfer of *Participating Interest* by the Contractor is not meant for gaining any profits.

Example:

- Alfa Inc, a company established in country X, is engaged in oil and gas mining industry.
- Berta Inc, a company established in country Y, is engaged in oil and gas mining industry.

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- In 2009, Alfa Inc rewarded with Duku Block. Alfa Inc established Alfa Duku Inc in Country Z and registered BUT Alfa Duku Inc (ADI) in the Foreign Entities and Individuals II Tax Service Office. In 2009, BUT ADI signed the contract with Upstream Oil and Gas Executive Agency (BP MIGAS) and holds 100% interest in Duku Block. Countries X, Y, and Z are non-tax treaty countries.
- Until 2014, BUT ADI has incurred cost of US\$4,000,000 for exploration activities in the Duku Block.
- In 2015, BUT ADI signed a transfer of 50% (fifty percent) Participating Interest assignment agreement with BUT Berta Duku Inc (BDI).
- This transaction has met 3 (three) criteria for the Final Income Tax exemption i.e. letter a, letter b, and letter c mentioned above.
- The following are example of the transfer of *Interest* transaction from BUT ADI to BUT BDI during Exploration period in regard to risk sharing:

- 1) Buyer (BUT BDI) proportionately reimburses the cost incurred by BUT ADI

Compensation arrangements:

BUT BDI will reimburse 50% (fifty percent) of BUT ADI cost of US\$2,000,000 (50% from US\$4,000,000). Starting from 2015, the exploration cost will be borne by BUT ADI and BUT BDI 50% (fifty percent) each.

This transaction is included in the definition of transfer of *Participating Interest* not meant for gaining any profits. Since this transaction has met the 4 (four) risk sharing criteria, this transaction is not subject to Final Income Tax.

If BUT BDI paid US\$3,000,000 to BUT ADI for the 50% (fifty percent) of the total cost incurred by BUT ADI, BUT ADI obtained profit of US\$1,000,000 (US\$3,000,000 – US\$2,000,000) and hence, this transaction is not included in the definition of risk sharing and therefore is subject to Final Income Tax.

Final Income Tax = 5% x US\$3,000,000.00 = US\$ 150,000.00

(withheld by BUT BDI and BUT BDI must provide BUT ADI with the withholding tax slip)

The Article 26 paragraph (4) Income Tax calculation on the taxable income after Final Income Tax from transfer of *Participating Interest* is as follows:

| | |
|---|----------------------------|
| Income from transfer of <i>Participating Interest</i> | = US\$ 3,000,000.00 |
| Cost incurred | = <u>US\$ 2,400,000.00</u> |
| Taxable income | = US\$ 600,000.00 |
| Final income tax | = <u>US\$ 150,000.00</u> |
| Article 26 (4) Income Tax base | = US\$ 450,000.00 |
| Article 26 (4) Income Tax payable (20% x US\$450,000.00) | <u>US\$ 90,000.00</u> |

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- 2) Buyer (BUT BDI) pays the future cost amounting the cost has been incurred by BUT ADI proportionally.

Compensation arrangements:

BUT BDI will pay the future cost up to US\$ 4,000,000.00 and BUT ADI will pay none. Starting 2015, exploration cost up to US\$ 4,000,000.00 will be borne by BUT BDI (therefore the total expense incurred in Duku Block is amounting US\$8,000,000.00). Afterwards, the (future cost) Exploration cost to be incurred will be borne by BUT ADI and BUT BDI at 50% each.

This transaction includes in the definition of the transfer of *Participating Interest* not meant for gaining any profits. This transaction has met the 4 (four) criteria of transaction for risk sharing and is therefore not subject to Final Income Tax.

However should BUT BDI agreed to pay the future exploration cost up to US\$ 5,000,000.00 (which is supposed to be US\$ 4,000,000.00) and the (future cost) Exploration cost to be incurred will be borne by BUT ADI and BUT BDI at 50% each, BUT ADI will make profit of US\$ 1,000,000.00 (US\$ 5,000,000.00 – US 4,000,000.00). This transaction is therefore not included in the definition of risk sharing and subject to Final Income Tax.

Final Income Tax = 5% x US\$ 5,000,000.00 = US\$ 250,000,000.00

(withheld by BUT BDI and BUT BDI must provide BUT ADI with the withholding tax slip)

The Article 26 paragraph (4) Income Tax calculation on the taxable income after Final Income Tax from transfer of *Participating Interest* is as follows:

| | |
|---|----------------------------|
| Income from transfer of <i>Participating Interest</i> | = US\$ 5,000,000.00 |
| Cost incurred | = <u>US\$ 4,000,000.00</u> |
| Taxable income | = US\$ 1,000,000.00 |
| Final income tax | = <u>US\$ 250,000.00</u> |
| Article 26 (4) Income Tax base | = US\$ 750,000.00 |

- 3) Buyer (BUT BDI) only considers the future cost, BUT BDI does not reimburse the expenses incurred by BUT ADI.

Compensation arrangements:

BUT BDI will only bear the Exploration cost starting from 2015 proportionally in accordance with its ownership of interest (50%) and will not reimburse expenses incurred by BUT ADI (US\$ 4,000,000.00).

When Duku Block commences its production and the Government reimburses the expenses incurred, the reimbursement from Government for expenses of US\$ 4,000,000.00 shall become BUT ADI's right (Sole Risk).

~~-PwC Unofficial English Translation-~~

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ATTACHMENT III

The transaction is included in the definition of transfer of *Participating Interest* not meant for gaining any profits. Considering that the transaction has met the four transaction criteria for risk sharing as intended in Article 3 paragraph (1) of this Minister of Finance Regulation the transaction is therefore not subject to Final Income Tax.

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MINISTER OF FINANCE

s/b

AGUS D.W. MARTOWARDOJO

Copy is made in accordance in accordance with the original
HEAD OF GENERAL BERAU

HEAD OF MINISTRY ADMINISTRATION

s/b

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