

GUIDELINES ON APPLICATION OF TAX INCENTIVES FOR UPSTREAM PETROLEUM INDUSTRY UNDER PETROLEUM (INCOME TAX) ACT 1967 AND CUSTOMS ACT 1967

Under the Economic Transformation Programme (ETP), the Government has introduced tax incentives for upstream petroleum industry effective from 30th November 2010. This is in line with the Government's intention to encourage investments in oil and gas industry that is affected by high risk, technically challenging and requires high capital investment.

Hence, these guidelines are to further clarify on qualifying criteria, application procedures, application form filling procedures and other related matters.

A. GENERAL GUIDELINES

1. Application must be submitted by the Operator of the Production Sharing Contract (PSC) / Risk Service Contract (RSC) / Technical Service Agreement (TSA) / Other form of contractual arrangement to Ministry of Finance (MOF) through PETRONAS by using **"Tax Incentive Application Form for Upstream Petroleum Industry"** which can be downloaded from the MOF's website.
2. Application must be submitted through PETRONAS for validation purposes. Any application submitted directly to MOF will be treated as incomplete and will not be considered by MOF.
3. Application is subject to terms and conditions in accordance with the Petroleum (Income Tax) Act 1967 (PITA), Customs Act 1967 and other rules and regulations related to the upstream petroleum industry. (Please refer to **Appendix A** for qualification criteria).
4. Application forms shall be submitted to PETRONAS after obtaining the 1st (first) approval of the Field Development Plan (FDP) with condition the form is submitted to MOF (via PETRONAS) within five (5) year from the date of the first FDP approval. **Effective 1st September 2021, any application received beyond the five (5) year period from the date of the first FDP approval will not be considered by MOF.**
5. Total reserves (in MMstb / Bscf) shall be based on the estimates as approved in the first FDP approval.
6. Any amendments made to the first FDP approval must be stated in the application form. (Refer to **Section C - Project Background**)

7. All application forms must be addressed to MOF and submitted through PETRONAS as per below:

**PETROLIAM NASIONAL BERHAD,
Level 24, Tower 1,
Kuala Lumpur City Centre,
50088 Kuala Lumpur,**

For attention:

**Head
Finance & Accounts
Malaysian Petroleum Management (MPM)**

8. MOF reserves its right to re-evaluate the projects that have been approved for incentives to ensure that the approved projects are still eligible to claim the incentives provided.
9. Therefore, PETRONAS and MOF have the jurisdiction to request any additional relevant information from the Operator (e.g. details on Capital Expenditure by phases and Operating Expenditure).

B. CALCULATION OF TAX SAVINGS

1. Calculation of total tax savings must ~~also~~ be included in the application form. (Refer to **Section F – Estimated Tax Payable With and Without Tax Incentive**)
2. The calculation of total tax savings is based on the estimated tax to be paid in accordance with the provisions under the PITA and Customs Act 1967 by taking into account the amount of tax payable, with or without tax incentives. The calculation is based on the Cash Flow Estimate prepared by the Operator.
3. The calculation of total tax savings is based on three (3) scenarios:
 - a) average price for the past ten (10) years;
 - b) preceding year price; and
 - c) current year price.
4. In addition, capital expenditure will also be used as a basis for the calculation of total tax savings.
5. The expected utilisation period refers to the estimated period for which the incentivised capital expenditure will be fully utilised. The period (in number of years) should be estimated relevantly and rationally by the Operator by making the Cash Flow Estimate as the primary basis for such determination.

6. For projects that have been approved incentives previously, and the company has finalised the actual amount of capital expenditure where the amount differs from the amount submitted in the application form endorsed by the Upstream Petroleum Industry Committee meeting, the Operator shall update PETRONAS on the total tax savings based on the latest amount of total capital expenditure.
7. The five (5) parameters that will be taken into account in the calculation of tax savings are:

Parameter	Description
Price	- Crude Oil: Platts Dated Brent - Natural Gas: Platts FO 180 CST 3.5%S FOB Singapore Cargo - Infrastructure: According to Tariff Rate
Period	From the year the company starts to claim investment allowance until the final year based on the estimated cash flow.
Currency Exchange Rate	According to the currency exchange rate provided by Bank Negara Malaysia.
Capital Expenditure	- Capital Expenditure is expected to be constant for each scenario. - For newly started projects – capital expenditure is based on the total cost as stated in the first FDP approval. - For ongoing projects / fully completed projects – capital expenditure is based on the latest estimate / actual total project cost.
Escalation Rate	- The prices and costs for the three (3) scenarios are assumed to be constant throughout the estimated years to obtain the Cash Flow Estimate .

C. DEFERMENT OF TAX INCENTIVES

1. Any deferment in the utilisation of tax incentive must be informed to MOF via PETRONAS.
2. Only deferment of marginal field tax incentive is allowed provided that the deferment is due to the absence of oil production.

D. SURRENDERING OF TAX INCENTIVES

1. The Operator who intends to surrender the incentives due to reasons such as termination of operations and etc. is required to officially inform PETRONAS and the matter will be deliberated in the Upstream Petroleum Industry Incentive Committee Meeting.
2. MOF will issue an official notification letter to the Inland Revenue Board, Royal Malaysian Customs Department and PETRONAS on the termination of such incentives.

E. CHANGE OF PARTIES IN CONTRACT AGREEMENT

Operator to officially inform PETRONAS on any changes in contractual parties of the PSC / RSC / TSA / other form of contractual arrangement and this matter will be further deliberated in the Upstream Petroleum Industry Incentive Committee Meeting.

F. APPEAL OF APPLICATION

1. All applications for appeal must be directed in writing to MOF. Feedback will be provided by MOF within 90 (ninety) days upon receiving the appeal letter.
2. MOF's decision on the appeal must be informed to PETRONAS within 1 (one) month from the date the decision letter is issued.
3. PETRONAS is not responsible for any decision made by MOF.

1. SUMMARY OF TAX INCENTIVE CRITERIA

Type of Incentive	Type of Project	Technical Criteria
Marginal Field	Marginal Field	A field in a petroleum agreement area which has potential crude oil reserves not exceeding 30MMstb or natural gas reserves not exceeding 500 Bscf.
Investment Allowance	High Pressure High Temperature	A project for the development of a reservoir in an undisturbed bottom hole temperature condition of >10,000psi (pressure) and > than 150°C or 300°F (temperature).
	High Carbon Dioxide Gas	> 20% or not meeting gas plant specifications post blending and require carbon dioxide removal
	Enhanced Oil Recovery	A tertiary development project which involves processes where external energy is applied to the reservoir to improve the recovery factor from producing fields.
	Deepwater Project	A project in water depth of > than 200 meters.
	Qualifying Capital Expenditure On "Infrastructure Asset"	Qualifying capital expenditure incurred by a chargeable person on an asset in respect of pipeline and associated facilities, directly used for the purposes of handling and transporting petroleum by that chargeable person to any point of sale or delivery or report.

2. OTHER REFERENCES

- i. Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) Rules 2013 [*P.U.(A) 119/2013*]
- ii. Petroleum (Income Tax) (Investment Allowance) Regulations 2013 [*P.U.(A) 120/2013*]
- iii. Petroleum (Income Tax) (Marginal Field) Regulations 2013 [*P.U.(A) 121/2013*]
- iv. Petroleum (Income Tax) (Exemption) Order 2013 [*P.U.(A) 122/2013*].
- v. Petroleum (Income Tax) (Exemption) (Amendment) Order 2014 [*P.U.(A) 57/2014*].

- vi. Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) (Amendment) Rules 2014 [*P.U.(A) 58/2014*].
- vii. Petroleum (Income Tax) (Investment Allowance) (Amendment) Regulations 2014 [*P.U.(A) 69/2014*].
- viii. Petroleum (Income Tax) (Accelerated Capital Allowances) (PETRONAS Marginal Field) Rules 2014 [*P.U.(A)304/2014*].
- ix. Petroleum (Income Tax) (Exemption) Order 2014 [*P.U.(A) 305/2014*].
- x. Petroleum (Income Tax) (Petronas Marginal Field) Regulations 2014 [*P.U.(A) 317/2014*].
- xi. “Garis Panduan Tuntutan Insentif Bagi Industri Petroleum Hulu Di Bawah Akta Petroleum (Cukai Pendapatan) 1967 (Pindaan)” in the Inland Revenue Board’s websites.