

## CHAPTER 11 PETROLEUM INDUSTRY

**Historical background** Searches for oil in Thailand were first made in 1921. At that time, petroleum activities were solely within the Government sector. In the beginning, exploration of petroleum was conducted by the Military Fuel Division which discovered the first oil field known as Bo Thon Kham in northern Thailand. Subsequently, a number of other oil fields were discovered, but their operations were not very productive.

Attempts to attract foreign investors for petroleum exploration was initiated in 1960. Subsequently, the first foreign oil company was granted a petroleum exploration permit by virtue of the Minerals Act then prevailing as the exploration and mining of minerals included petroleum.

For the purpose of promoting petroleum exploration and production and to attract more investors, Thailand enacted the Petroleum Act and Petroleum Income Tax Act in 1971, after its ratification of the Convention on Continental Shelf and the first United Nations Convention on the Law of the Sea. The Petroleum Act was amended in 1973, 1979, 1989 and 1991. The 1991 amendment exempts machinery and equipment from import taxes.

**Petroleum Act** Under the Petroleum Act, *petroleum* includes crude oil, natural gas, natural gas liquid, by products and other naturally occurring hydrocarbons in a free Government, whether solid, semi-solid, liquid or gaseous, and all heavy hydrocarbons which can be recovered in situ by thermal or chemical processes, but does not include coal, oil shale or other kinds of rocks from which oil can be extracted by application of heat or chemical process.

The Petroleum Act regulates the conduct of petroleum operations, including exploration, production, storage, transport, sale, or disposal of petroleum undertaken anywhere in Thailand, including the areas of the continental shelf over which Thailand has jurisdiction.

Petroleum exploration and production grants to private investors are in the form of concessionary contract wherein the concessionaire pays to the government royalties, special remuneratory benefits and tax in consideration for the concession granted. In addition, the concessionaire may offer to the government special advantages that are normally in the forms of scholarships, training, grants to government agencies or educational institutions, signature and production bonuses, or Government participation in the concessionaire's equity. Concession agreements are to modelled on a draft contained in a ministerial regulation.

Under the previous provision, the price of the exported crude oil is based on the most up-to-date method of quality valuation, giving due regard to the posted price of comparable crude oil in the Persian Gulf, geographical locations, of the point

of export and the point of purchase, including market outlets and transportation costs. The price is thus notified unilaterally by the concessionaire without Government intervention. However, under the last amendment to the Petroleum Act, the government is empowered to rectify the notified price of the exported crude oil.

In 2017, changes were approved whereby exploration and production may take place under:

- A production sharing contract (PSC) or
- a service contract (SC).

The Ministry of Energy will decide the contents of a PSC or SC. Concessions may still be granted.

**Significant features of PSCs** Significant features of such contracts include the following:

- All actual expenditures in petroleum operations are to be borne by the contractor and deducted from production, as detailed in the contract, and as under the work plan and budget approved by the Director-General.
- Deductions may not exceed 50% of the total production. If actual expenditure exceeds 50% in any year, the excess can be deducted in the following year, as long as such expenses for that year do not exceed 50%.
- Up to 50% of the remainder of total production, after deduction and payment of the royalty, shall be shared with the contractor
- The portion of production owned by the government may either be sold or disposed of by it, or the contractor at the Government's request
- Ownership of all construction materials, equipment, property and facilities used in petroleum operations acquired by the contractor is to be vested in the government
- Certain provisions of the Petroleum Act on Petroleum Exploration and Production under concessions also apply to PSCs, notably as to grant, renewal and revocation of rights; duration and renewal of exploration and production periods; demarcation, award and relinquishments of exploration blocks; award of production areas; and transfer of rights.
- The contractor is to pay a royalty of 10% on the total production.

**Significant features of SCs** Such contracts shall include the following:

- Remuneration, calculation and payment of remuneration may be made in petroleum production or money, and only upon commercial production
- The term of petroleum exploration and production shall not exceed 30 years, with reasons for early termination to be included in the contract
- Rules, procedures, work plan, reporting procedures and conditions of measurement are to be included in the production/exploration contract
- SCs require annual approval of a work plan and budget by the government, with expenses for petroleum operations to be borne by the contractor, and total production is to be owned by the Government. The Government may dispose of or sell any portion of its production, or may request the contractor to do so;
- Money received by the government from the sale or disposal of production is to be first paid as a royalty, with the remainder to be paid as remuneration and expenses under the production/exploration contract. The remainder, if any, is to be remitted to the Government
- The government is to pay a royalty of 10% on the petroleum produced

### **Exploration and production regime**

**Exploration blocks and areas** A petroleum concession may cover an area of not more than five exploration blocks provided that the aggregate areas of such exploration blocks shall not exceed 20,000 square kilometers. For exploration blocks having water depth in excess of 200 meters, the Minister of Industry shall have the power to award a concession in a number of exploration blocks and the total area thereof as the Minister deems appropriate.

**Exploration period** The exploration period must not exceed six years from the date of granting of such concession with a possible extension for three years. Such exploration period is divided into three obligation periods. The first period is the first three years of the term, the second is the remaining petroleum exploration period after the first period and the third is the period of the renewal of the petroleum exploration period, if such period has been renewed. The concessionaire is required to fulfil certain work and expenditure obligations within the exploration period.

During the exploration period, the concessionaire may produce petroleum with approval from the competent authority, provided that the concessionaire demonstrates that a commercial well has been discovered and the production area has been correctly defined.

**Relinquishment** At the end of the fourth year, 50% of the exploration area must be relinquished except for exploration blocks that are more than 200 meters deep, of which only 35% need be relinquished. At the end of the exploration period if an extension is not applied for, the entire area remaining is relinquished. Where an extension is sought, a further 25% of the area must be relinquished except for exploration blocks that are more than 200 meters deep, of which 40% must be relinquished. At the end of the renewed period, the concessionaire must relinquish all the remaining area. However, the concessionaire may be entitled to reserve 12.5% of the exploration area for a period not exceeding five years for further exploratory work, provided that the concessionaire has the right to produce petroleum from that area after the exploration period has ended.

**Production period** The production period must not exceed twenty years from the day following the end of the exploration period, notwithstanding any petroleum production undertaken during the exploration period. The production period may be extended for a further period of not more than 10 years.

**Petroleum Income Tax Act** Petroleum Income Tax is a direct tax, levied annually for each accounting period on net profit of a "*petroleum taxpayer*", who is carrying out the business of petroleum exploration and production. It is also levied on the disposal of profits outside of Thailand. The rules and regulations for petroleum income tax are covered under the Petroleum Income Tax Act. The rates, penalties, surcharge, etc. are different from that of corporate income tax.

**Accounting period** An accounting period is normally 12 months. The Revenue Department may grant permission for more or less than 12 months, if justified. The first accounting period shall begin on the day that the company makes its first sale or disposal of petroleum subject to royalties. This day is deemed to be the commencement of the accounting period.

An accounting period may be shorter than 12 months for the following cases:

- (a) if the company takes any day as the closing date of the first accounting period
- (b) if the company ceases its petroleum business, the date of dissolution shall be the closing date of the accounting period
- (c) if the company changes the closing date of an accounting period with the approval of the Director-General

Where the company transfers any rights under a concession prior to the commencement date of the first accounting period, the date of transfer shall be deemed to be the opening and closing date of the accounting period.

**Tax base** The term 'petroleum taxpayer' covers any person who:

- (1) holds a concession under petroleum law or has a joint interest in it; or
- (2) purchases crude oil produced by any concessionaire, all of which is intended for export.

A concession under the Petroleum Act is required only for exploration and production of petroleum products (including crude oil, natural gas and liquid natural gas).

Downstream industries including refining are not covered under Petroleum Income Tax Act.

**Three different tax versions** Amendments to the Petroleum Income Tax Act create three different liabilities to tax. A petroleum tax payer is liable for one of three types of tax. A taxpayer should submit one return per period per status. Where a taxpayer has to file returns in more than one status, he has to do so treating each status as a separate company (in matters of allowances, adjusting of carried forward losses, etc.)

The important differences in tax calculation/remittance between the three versions of tax are as follows:

1971 Act Only an annual return is required. No need for a half year return. Interest is not allowed as expenditure. Royalties are allowed as a tax credit. No special remuneratory benefit tax. Tax rate is 50%.

1979 Act Only an annual return is required. No need for a half year return. Interest is allowed as expenditure. Withholding tax of 50% on interest paid is charged. Royalties are allowed as expenditure. No special remuneratory benefit tax. Tax rate is 35%. Profit remittance tax of 23.08%

1979 Act Annual and half yearly returns are required. Interest is not allowed as expenditure. Royalties are allowed as expenditure. Special remuneratory benefit tax of 50% is due.

All petroleum taxpayers are required to pay withholding tax at 50% on profits on transfers (transfer proceeds less losses carried forward) when petroleum property or rights are transferred and if the total amount of such income is not clearly assessable.

While calculating net profit, the following items are included as revenue:

- (1) Gross income from sale of petroleum;
- (2) Value of petroleum disposed of;
- (3) Value of petroleum delivered as payment of royalty in kind;

- Gross income arising from a transfer of any property or rights related to
- (4) petroleum business, if the total amount of such gross income is clearly assessable;
  - (5) Any other income arising from conducting petroleum business.

The following are deductible expenditure:

- (1) Ordinary and necessary expenses
- (2) Interest remitted and withholding tax paid
- (3) Value of royalty paid to the Thai Government
- (4) Value of special remuneratory benefit tax paid.
- (5) Capital expenditure allowance for depreciation
- (6) Net losses carried forward over the previous 10 years
- (7) Bad debts
- (8) Donations not exceeding 1% of profits
- (9) Contributions to provident fund / pension fund

**Tax rates** The tax rate is linked to the status of the taxpayer. At present, the tax rates are as follows:

#### Petroleum Income Tax

##### (a) Petroleum Income Tax Rates

- 1971 Act (status 1) 50%
- 1979 Act (status 2) 35%
- 1989 Act (status 3) 50%
- Disposal of profits 23.08%

##### (b) Withholding Tax Rates

For transfer of petroleum

Property or rights	50%
(Specifically for income gained from transfer where it is possible to specify a certain total amount)	
Payment of interest	50%
Payment of dividend	23.08%
Payment of interest	15%
Payments for other services	Depends on the service

Payment of tax Petroleum companies are required to submit their annual return within five months from the date of closing of their accounting period. Payment of tax must be made at the time of filing the return.

A return for profit remittance must be submitted within seven days from the date of remittance.

In addition to the annual tax payment, petroleum companies in status 3 are required to submit a half year return based on estimated profit. The petroleum company must estimate its annual profit and pay half the amount of tax calculated on such basis within two months after the end of first six months of its accounting period. The estimated tax payment is a credit against the annual tax liabilities of the company.

**2017 Petroleum Income Tax Act amendments** In the case of a PSC, PITA has been amended.

- A company that is a party to a PSC must pay income tax of 20% of the net profits from the petroleum business.
- The PITA does not mention SCs. Thus, a party to a SC is subject to General income tax under the Revenue Code of 20%.

As of December 2018, the forms of PSC or SC have not yet been published.

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