Comparison of Petroleum Fiscal Regimes Within Malaysia

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Comparison of Petroleum Fiscal Regimes within Malaysia

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Introduction

The study discusses the petroleum fiscal regime changes experienced in the Malaysian oil and gas industry from pre-1974 to 2010. Apart from the work of Johnston (1994, 2003, 2008) which compares international petroleum fiscal systems, global literature has placed less emphasis on Malaysia’s petroleum fiscal regimes. Johnston (1994, 2003, 2008) compared petroleum fiscal systems of more than fifty oil producing countries, but his study is an international analysis, whereby he compared one of Malaysia’s petroleum fiscal regimes with others globally. In addition to Johnston (1994, 2003, 2008), other studies also compared one or more of Malaysian petroleum fiscal regimes to that of other countries, either within Asia or globally (Agalliu, 2011; Khelil, 1995; Putrohari, Kasyanto, Suryanto, & Rashid, 2007).

Publicly available evidence does not reveal that a comparison of various petroleum fiscal regimes in the Malaysian oil and gas industry has been done. Therefore, as opposed to other studies that compared Malaysian petroleum fiscal regimes to others globally, the aim of the current study is to make a local comparison of various petroleum fiscal regimes in Malaysia. These fiscal regimes range from the concessionary system of the pre-1970s to Production Sharing Contracts (PSCs) of 1976, 1985, deepwater PSCs of 1993, Risk over Cost (R/C) PSC of 1998 and finally, Risk Service Contract (RSC) introduced for marginal oil fields in 2010.

This study would be of significance in a number of ways. First, while Malaysia is one of the countries with the oldest oil and gas industry,
literature on either its industry in general or its petroleum fiscal regimes in particular, is very minimal. Second, even among the available literatures that discuss the Malaysian petroleum fiscal regimes, the analyses are based on international comparisons. Third, as far as this study is concerned, this may be the first study that makes a local comparison of various petroleum fiscal regimes in Malaysia. Therefore, based on the aforementioned reasons, the study will add to the literature on this area of study.

The organization of the remaining parts is as follows: the second part overviews the Malaysian oil and gas industry; the third part is a comprehensive discussion on various petroleum fiscal regimes in Malaysia; the fourth part is a local comparison of different petroleum fiscal regimes in the Malaysian oil and gas industry; and the last part concludes the study.

Overview of the Malaysian Oil and Gas Industry

Malaysia’s oil industry has been in existence for a very long time. The first oil discovery was witnessed in 1910 with the pioneer oil well drilled at Canada Hill, Miri Sarawak in the same year (Shell, 2013). This pioneer oil well, popularly known as the Grand Old Lady, had a capacity of 83 barrels per/day (b/d) at that time (Bank Pembangunan, 2011). The field produced approximately 80 million barrels of oil before the World War II with an average daily oil production of 15,000 b/d in 1929. However, scorched earth policies and bombing during the war led to a drastic decline in oil production in Malaysia (Bank Pembangunan, 2011). The fields affected by the war were in Borneo and Peninsular; however, production resumed after the war in the 1950s. Oil production in the Borneo fields expanded exponentially in the 1960s due to a substantial offshore discovery in Sarawak. This discovery was a turning point for both Shell’s operations in Malaysia as well as for the country itself (Shell, 2013). Hence, oil and gas companies, such as Esso and Conoco, ventured into offshore oil and gas activities in Malaysia (Bank Pembangunan, 2011).

It is worth noting that oil and gas production, which started from an insignificant level of 83 b/d in 1910, expanded to 15,000 b/d in 1929, 100,000 b/d in 1974 and 600,000 b/d in the 1990s (Economic Transformation Program, 2010). Thus, this development has resulted in Malaysia being rated among the top 30 oil producing countries in the world, occupying 28th place (Abdullah, 2012). Malaysia has also been and still is the second largest natural gas producer in the Asia Pacific Region (US-Energy Information Administration, 2013). Oil production in Malaysia reached its peak in 2004 with production exceeding 800,000 barrels p/d and the country continues to be the net exporter of oil (Islam, Jameel, & Jumaat,
Moreover, it is forecasted that export levels will increase in 2014 due to production increases resulting from changes in fiscal policies for marginal oil fields (US-Energy Information Administration, 2013).

Malaysia is also among the top five countries for oil and gas export. It occupies second position in the world after Qatar (US-Energy Information Administration, 2013). The country is also ranked among the top 30 countries in terms of oil reserves, with its oil reserves standing at four billion barrels in 2010. In Asia, Malaysia is among the top five natural gas producing countries, occupying third place (US-Energy Information Administration, 2013).

Furthermore, the Malaysian oil and gas industry is a significant contributor to Malaysia’s Gross Domestic Product (GDP). This sector’s contribution was insignificant in the pre-1970s. However, the contribution rose to 16% in 2000, 20% in 2008, dropped to 19% in 2009, rose to 20% in 2012, and is forecasted to reach 25% by the year 2020 (Economic Transformation Program, 2010). Additionally, the Malaysian oil and gas sector has been a major contributor to the country’s annual budget contributing about 40%, and plays an important role in financing the five-year development plans (Lee, 2013). The oil and gas sector contributes significantly to the country’s energy mix constituting 80% of the country’s energy need. This sector has been identified as one of the Key Economic Areas under the country’s Economic Transformation Program.

Despite the economic importance of the oil and gas sector in Malaysia, evidence points to a continued decline in oil production (Economic Transformation Program, 2010). In fact, experts have pointed out that it has been difficult for the country to sustain production since the 1990s (Economic Transformation Program, 2010). The decline in production has also affected the gas subsector. In fact, it is emphasized that unless other projects come on board, gas production will continue to decline from its 2010 levels. Thus, it is these diminishing trends that drove Malaysia’s decision to change its fiscal framework for marginal oil fields in 2010 (US-Energy Information Administration, 2013). The fact is that the marginal oil fields form a significant composition of Malaysia’s oil and gas reserves. The cumulative reserves in these small fields stand at about 580 million barrels of oil equivalent (Na, Zawawi, Liew, & Razak, 2012). Hence, there is a need to develop these fields to optimize the country’s oil and gas production.
The Malaysian Petroleum Fiscal Regime

Several attempts have been made by many scholars to compare Malaysian petroleum fiscal regimes with those of other countries. A study by Khelil (1995) which compares six petroleum fiscal regimes (Portugal, Louisiana, Thailand, Nigeria, Malaysia and Indonesia) in terms of Government Take (GT) for onshore and offshore fiscal systems rated Malaysia second highest after Indonesia. However, in the same report, Malaysia was rated average for deepwater fiscal terms on a five pointscale – of: very favorable, favorable, average, tough and very tough (Khelil, 1995).

Similarly, in a more comprehensive analysis which compared petroleum fiscal regimes of about fifty countries between 1998-2007, it was found that Malaysia R/C Ratio PSC is among the most rigid fiscal regimes in terms of GT, although it has been leveraging downwards by reducing GT and increasing Contractor Take (CT) in recent times (Johnston, 2008). The rigidity in Malaysia’s petroleum fiscal regime is mentioned in the work of Faizli (2012). Faizli (2012) posits that despite the said strictness of Malaysia’s fiscal regime, the country is still experiencing foreign investment from a number of multinational oil and gas companies.

A more recent analysis of the global petroleum fiscal regimes which compared both onshore and offshore fiscal systems, rates Malaysia’s fiscal regime as regressive due to the existence of the royalty component (Agalliu, 2011). The current RSC introduced for marginal oil fields has shifted the royalty payment from the contractor to PETRONAS (Gerber, 2012). Furthermore, the same report placed Malaysia’s offshore fiscal regime as the second highest after Venezuela in terms of GT, fifth lowest in terms of Profitability Index (PI) and fourth lowest in terms of investors’ Internal Rate of Return (IRR).

In Asia, comparison of fiscal systems in five countries including Brunei, Indonesia, Malaysia, Thailand and Vietnam under the PSCs reveals that Thailand’s Royalty/Tax (R/T) concession of 1972 had the highest value in terms of investment followed by Indonesia’s First Tranche Petroleum (FTP) of 1988. However, continuous adjustments in fiscal systems among these countries with the aim of maximizing GT, has placed Indonesia’s 2006 PSC as the best regime among the analyzed countries (Putrohari, et al., 2007).

While the foregoing analyses of global petroleum fiscal regimes indicate that Malaysia’s fiscal regime is relatively rigid, few studies have attempted a local comparison of the various petroleum fiscal regimes.
Malaysia has been adjusting its petroleum fiscal regimes since the legislation of the Petroleum Development Act, 1974. The reasons for these adjustments may be connected to the country’s desire to improve the attractiveness of its petroleum fiscal systems, thereby improving the investment climate and attracting investors locally and from abroad. The following subsections discuss those adjustments in the petroleum fiscal regimes experienced by Malaysia’s oil and gas sector since the 1970s.

Concessionary System

As in other oil producing countries, the concessionary system, otherwise known as the royalty/tax system, is the pioneer fiscal regime in Malaysia. The concessionary arrangement was first signed between Shell and the Malaysian government in the 1960s, when the country’s oil and gas production increased remarkably due to offshore discovery in Sarawak and Sabah during that period. Besides, other Foreign Oil Companies (FOCs), such as Elf, Aquitaine, Oceanic and Telseki, also joined the Malaysian basins in a bid to engage in concessionary arrangement (Mehden & Troner, 2007). Furthermore, in the late 1960s, more oil companies joined the rest and signed concessionary arrangements to explore for oil and gas resources. These oil companies included Conoco and Esso, who were awarded the concessionary contracts to extract oil and gas off the east-coast of Peninsula Malaysia (Bank Pembangunan, 2011; Mehden & Troner, 2007).

The fiscal components under Malaysia’s concessionary system are taxes and royalty. These royalty and taxes were imposed and collected by the state governments under whose jurisdiction oil and gas resources were discovered (Lee, 2013; Razalli, 2005). Under the states’ control, the concessionary system was governed by the mining enactment of those states. The system operated like a leasing agreement, where the exclusive rights at the well-head level were given by the resource owner to FOCs (Lee, 2013).

The Petroleum Development Act of 1974 transferred the control and ownership of oil and gas resources from individual states to PETRONAS (Razalli, 2005). The Act also introduced the PSC, which repealed the concessionary arrangement (Lee, 2013). Thus, to please the oil and gas producing states, the 10% royalty collected from the FOCs is equally shared between the federal and state governments at five percent each (Lee, 2013).
Production Sharing Contract

The Petroleum Development Act of 1974 subsequently led to the emergence of the PSC in the Malaysian oil and gas industry. There are several justifications for this Act: first, the concessionary system, which was the fiscal arrangement before the 1974 Act, gave more control to FOCs than the government. The government’s benefit under such a system was limited to royalties and taxes. Therefore, to exercise control over its sovereign natural resources, the government switched from the concessionary system to the PSC (Mehden & Troner, 2007). Consequently, the first PSC was introduced in 1976, whereby the control and ownership of oil and gas resources were transferred from the state governments to PETRONAS in 1975 (Lee, 2013; Razalli, 2005).

The fiscal regime components under the 1976 PSC as outlined by the Coordinating Committee on Geosciences Program-CCOP (2004) are 10% royalty, 20% cost oil, 70% profit oil (splits on the ratio of 70:30 in favor of PETRONAS). The regime also provides for a Petroleum Income Tax (PIT) of 38% paid by both PETRONAS and the contractor to the government. The 1976 PSC fiscal regime was considered very stringent in terms of the cost oil ceiling and profit split compared to PSCs of other Asian countries, such as Indonesia and the Philippines (Lee, 2013). Specifically, the cost oil ceiling of only 20% per annum and profit oil split of 70:30 in favor of PETRONAS were the issues deemed as very stringent under the PSC regime. It is also these fiscal terms that led to the pulling-out of a number of oil companies. For example, Aquitaine Oil and Gas Company pulled out of Malaysia (Gale, 1981; Lee, 2013). However, other oil companies, such as Shell and Conoco, considered those terms as favorable during that time, and hence signed PSCs with PETRONAS in 1976 (Lee, 2013).

Due to the critics of the 1976 PSC regarding the cost oil ceiling and profit oil splits, the Malaysian government amended its PSC fiscal terms in 1985. Although royalty and tax rates remained at 10% and 38% respectively, adjustments were made to the cost oil ceiling and profit oil splits (CCOP, 2004). The main difference between the 1976 PSC and the 1985 PSC is the cost oil/gas ceiling and sliding scale profit oil splits. The cost oil/gas ceiling increased to 50% for oil and 60% for gas from the flat rate of 20% earlier. The profit oil splits sharing formula ranges from equal sharing of 50:50 between the parties based on production of 10,000 barrels p/d to 70:30 in favor of PETRONAS, when the daily production exceeds 20,000 barrels p/d.
Malaysia is committed to improving its fiscal terms for attracting investors. Thus, with continued intent to enhance the fiscal terms and encourage investment into deepwater fields, the government, in 1993, designed PSCs for deepwater fields (Layungsri, 2010). Apart from improving the fiscal terms to attract investors, the 1993 fiscal adjustment may be connected to the increase in offshore fields in Malaysia; hence, the need to attract investors who would be willing to invest in growing offshore oil reservoirs. The deepwater fiscal regime has attracted several large oil companies, such as Total and Murphy (Lee, 2013). It is worth noting that there are two types of deepwater PSCs in Malaysia depending on the water depth. The first type covers a depth of 200-1,000 meters, while the second type covers a depth in excess of 1,000 meters. There are two main features that differentiate deepwater PSCs from the 1985 PSCs. First, the regime introduced the recognition of the water depth limit, and second, it made an adjustment regarding the duration of contract (Layungsri, 2010). Moreover, other differences exist in relation to cost oil and profit oil sharing.

The cost oil ceiling was increased from 50% in 1985 to 70% in 1993 for deepwater PSCs. The cost oil ceiling remained at 60% for gas in both the 1985 and 1993 fiscal regimes. Profit oil remains on a sliding scale, but it changes from 50:50 when oil production is 10,000 barrels p/d to 70:30 when oil production is 50,000 barrels p/d in favor of the contractor. It then changes to 55:45 in favor of the contractor for the next 50,000 barrels of oil produced p/d, and finally, to 50:50 when oil production exceeds 100,000 barrels p/d. There are different terms for ultra-deepwater fields exceeding 1,000 meters of water depth. The cost oil ceiling for ultra-deepwater fields PSC increased from 50% in 1985 to 75% in 1993. The profit oil sharing was also changed to 88:12 in favor of the contractor when oil production exceeds 50,000 barrels p/d, and down to 50:50 when daily oil production exceeds 300,000 barrels.

With a view to continue improvement in the attractiveness of its fiscal regime under the PSC, in 1997, Malaysia introduced the Revenue over Cost (R/C) Ratio PSC. The effective date of this PSC was 1998 (Putrohari, et al., 2007). The major attribute of this PSC compared to the 1985 PSC is that it enables the contractors to recover the capital invested during the early stages of the project’s life on a faster basis. This is because the R/C Ratio PSC gives investors cost recovery ceiling and profit splits at different R/C ratios based on a sliding scale with a higher percentage during the early years of production (Putrohari, et al., 2007). Another attribute of the R/C Ratio PSC is that it brought the issue of participating interest by PETRONAS which hitherto did not exist in other PSCs (Putrohari, et al.,
Unlike the PSCs of 1976 and 1985, this R/C Ratio PSC has cost recovery for PETRONAS based on its participating interest. The R/C Factor Table for both cost oil ceiling and profit oil splits are presented in Table 1.
Table 1.

**R/C Ratio for 1998 PSC**

<table>
<thead>
<tr>
<th>Contractor's R/C Ratio</th>
<th>Cost Oil</th>
<th>Profit Oil</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cost Oil Ceiling</td>
<td>Unused Cost Oil</td>
</tr>
<tr>
<td>0.0 &lt; R/C &lt;= 1.0</td>
<td>70%</td>
<td>N.A</td>
</tr>
<tr>
<td>1.0 &lt; R/C &lt;= 1.4</td>
<td>60%</td>
<td>20:80</td>
</tr>
<tr>
<td>1.4 &lt; R/C &lt;= 2.0</td>
<td>50%</td>
<td>30:70</td>
</tr>
<tr>
<td>2.0 &lt; R/C &lt;= 2.5</td>
<td>30%</td>
<td>40:60</td>
</tr>
<tr>
<td>2.5 &lt; R/C &lt;= 3.0</td>
<td>30%</td>
<td>50:50</td>
</tr>
<tr>
<td>R/C &gt; 3.0</td>
<td>30%</td>
<td>60:40</td>
</tr>
</tbody>
</table>

*Note.* Adapted from “Overview of Malaysian PSC” Retrieved from http://www.ccop.or.th/ppm/document/CAWS4/MalaysianPSC.pdf, [14th May, 2014], Copyright by Coordinating Committee of Geosciences Program in East and Southeast Asia, 2004
It can be seen from Table 1 that cost recovery limits and profit sharing based on the R/C ratio favor the contractor in the early stages of the project, which subsequently decreases as the R/C ratio increases. This enables investors to recover the production proceeds during the early years of production.

The foregoing shows that PSCs (especially the deepwater fields and R/C Ratio) have remained the most common operating arrangement in the Malaysian oil and gas sector. In fact, there were only five PSCs in pre-1998 however; due to improvement in fiscal terms brought about by the R/C Ratio PSC, there were 83 PSCs as of 2012 (Lee, 2013). More interestingly, as of December 2013, PETRONAS celebrated 100 active PSCs (Zainul, 2013). It is worth noting that in three years only, i.e., from 2010 to 2012, 17 PSCs were signed (Ley, 2012), out of which 13 are shallow water and 4 are deepwater PSCs. Sarawak has the largest share of seven PSCs, Peninsular Malaysia with six PSCs and no PSCs in Sabah. In the case of the deepwater PSC, Sabah has the largest number of PSCs standing at three compared to one for Sarawak and none for Peninsular Malaysia. The majority of these PSCs are shallow water PSCs based on the R/C Ratio PSC of 1998. This implies the relative attractiveness of the Malaysian R/C Ratio PSC of 1998 which was designed to improve the investment climate in the Malaysian oil and gas fields.

**Risk Service Contract**

The growing number of marginal oil fields in Malaysia with low attractiveness is among the factors behind the emergence of the Risk Service Contract (RSC). The introduction of the RSC framework brought about new fiscal incentives which led to the amendment of the Petroleum Development Act in 2011 (Wei, 2011). In Malaysia, RSC is defined as:

A contract between the host country and contractors where the host country is the project owner and the contractors will recover the development cost and are paid a fixed fee for services rendered, based on their performance, relative to the development execution and subsequent production (PETRONAS, 2011, p. 91).

Under the RSC regime, it is the contractor’s responsibility to extract, develop and produce oil and gas from the fields awarded. However, produced oil and gas reserves belong to PETRONAS; thus, the contractor cannot book the reserve in its annual report (Bogdanich, Patten, Greenway, Maloney, & McLaren, 2013; Lacouture, 2013). Moreover, capital expenditures (CAPEX) and operational expenditures (OPEX) required for
exploration, development and production of the field are incurred by the contractor. In return, the contractor is reimbursed when production commences at an agreed-on cost oil ceiling of 70% (capital cost recovery is limited to 120% of estimated contractor’s bid due to inflation) (Bogdanich, et al., 2013; Lacouture, 2013). Moreover, each FOC that secures an RSC must join a Bursa Malaysia-listed local partner. The local player must hold at least 30% equity ownership in the venture.

As noted earlier, the rationale behind the fiscal regime adjustment from PSC to RSC is to encourage investment into marginal oil fields and improve the fields’ investment climate. Therefore, new fiscal incentives have been introduced. These fiscal incentives as outlined by Wei (2011) include: (i) reduction of tax rate from 38% to 25%; (ii) accelerating capital allowance from 10 to 5 years; (iii) waiver of the 10% exporting duty; (iv) deductible investment allowance of 60-100%; and (v) allowance of the transfer of qualifying CAPEX between non-contiguous petroleum agreements within the same partnership or sole proprietorship.

In addition to these incentives which are clearly expressed by the government, the new RSC regime offers some benefits to marginal oil field investors. For instance, there is no royalty payment on gross production proceeds by the contractor. It is PETRONAS who pays the royalty of 10% (Gerber, 2012). Similarly, there is no provision for a research CESS fee of 0.5% as exists under the PSC regime. In the PSC regime, research CESS is paid by the investor on both cost oil and profit oil (Yap, 2001). Moreover, the responsibility of decommissioning and dismantling of oil and gas facilities after the closure of fields remains with PETRONAS (Coastal Energy, 2012; Gerber, 2012). The regime also gives investors high rates of return of 7%-20% above, which might not be obtainable under the old regimes (Worldvest Asia Pacific, 2013). The RSC regime also guarantees that any unexpired cost at the end of a field’s life or contract expiration will be reimbursed (Lee, 2013). Nevertheless, the payment of tax under the RSC framework is based on the Corporate Income Tax (CIT), not PIT. It is asserted that CIT favors investors because it is not oil and gas project-specific and allows other corporate expenses, such as debt interest, to be deducted (Boadway & Keen, 2010).

In Malaysia, the RSC royalty of 10% is paid by PETRONAS from its share of gross revenue. Contractors pay CIT at 25% on their fee income, while PETRONAS pays PIT at 38%. Abandonment cost which was hitherto the responsibility of the contractor is now the responsibility of PETRONAS. Thus, the essence of this fiscal regime change is to attract investment into a growing number of marginal oil fields. Consequently, six RSCs have been...
signed between PETRONAS and contractors since 2011. The new regime has attracted several oil and gas investors, locally and from abroad, as outlined in Table 2.

Table 2.

**Summary of RSC Awards**

<table>
<thead>
<tr>
<th>Marginal Oil Fields</th>
<th>Location</th>
<th>Operators</th>
<th>Award Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berantai Offshore Gas Field</td>
<td>Terengganu</td>
<td>UK-based Petrofac and SapuraKencana Petroleum</td>
<td>January 2011</td>
</tr>
<tr>
<td>Kapal, Banang and Meranti (KBM) Cluster</td>
<td>Peninsular Malaysia</td>
<td>Coastal Energy Resources Company and PETRONAS Carigali Sdn.</td>
<td>June 2012</td>
</tr>
<tr>
<td>Tembikai-Chenang Cluster</td>
<td>Peninsular Malaysia</td>
<td>VSETIGO Petroleum Sdn Bhd</td>
<td>October 2013</td>
</tr>
<tr>
<td>Ophir Field</td>
<td>Peninsular Malaysia</td>
<td>Ophir Production Sdn Bhd (a joint venture of Octanex Pet Ltd, Scomi D&amp;P Sdn Bhd and VESTIGO Petroleum Sdn Bhd)</td>
<td>June 2014</td>
</tr>
</tbody>
</table>

**Comparison of Different Petroleum Fiscal Regimes in Malaysia**

Certainly, there have been various petroleum fiscal regimes in Malaysia. Table 3 presents a summarized comparison of petroleum fiscal regimes in Malaysia from the pre-1974 concessionary system to different types of PSCs and finally to the RSC.
Table 3.

Comparison of Petroleum Fiscal Regimes in Malaysia

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration</td>
<td>Long-term</td>
<td>Long-term</td>
<td>Long-term</td>
<td>Long-term</td>
<td>Long-term</td>
<td>Long-term</td>
<td>Medium</td>
</tr>
<tr>
<td>Risk</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>Low</td>
</tr>
<tr>
<td>Royalty Rate</td>
<td>10% paid by FOC</td>
<td>10% paid by FOC</td>
<td>10% Paid by FOC</td>
<td>10% paid by FOC</td>
<td>10% paid by FOC</td>
<td>10% paid by FOC</td>
<td>10% paid by PETRONAS</td>
</tr>
<tr>
<td>Cost Oil Ceiling</td>
<td>No Ceiling</td>
<td>20%</td>
<td>50% for oil; 60% for gas</td>
<td>70% for oil, 60% for gas</td>
<td>75% for oil, 60% for gas</td>
<td>Sliding scale on R/C Ratio</td>
<td>Sliding scale on 70%</td>
</tr>
<tr>
<td>Profit Oil Split</td>
<td>No profit split</td>
<td>70:30 in favor of PETRONAS</td>
<td>Sliding scale</td>
<td>Sliding scale</td>
<td>Sliding scale</td>
<td>Sliding scale</td>
<td>No profit split.</td>
</tr>
<tr>
<td>Ownership of Facilities</td>
<td>FOC</td>
<td>PETRONAS</td>
<td>PETRONAS</td>
<td>PETRONAS</td>
<td>PETRONAS</td>
<td>BETRONAS</td>
<td>PETRONAS</td>
</tr>
<tr>
<td>Tax Rate</td>
<td>38%</td>
<td>38%</td>
<td>38%</td>
<td>38%</td>
<td>38%</td>
<td>38%</td>
<td>25%</td>
</tr>
<tr>
<td>Tax Laws</td>
<td>PITA</td>
<td>PITA</td>
<td>PITA</td>
<td>PITA</td>
<td>PITA</td>
<td>PITA</td>
<td>CITA</td>
</tr>
<tr>
<td>FOC Ownership of Oil</td>
<td>Gross less royalty and tax</td>
<td>Cost oil + profit oil only</td>
<td>Cost oil + profit oil only</td>
<td>Cost oil + profit oil only</td>
<td>Cost oil + profit oil only</td>
<td>Cost oil + profit oil only</td>
<td>None</td>
</tr>
<tr>
<td>Profitability</td>
<td>Ride on strong oil price</td>
<td>Ride on strong oil price</td>
<td>Ride on strong oil price</td>
<td>Ride on strong oil price</td>
<td>Ride on strong oil price</td>
<td>Ride on service fee</td>
<td></td>
</tr>
<tr>
<td>Govt. Control</td>
<td>Low</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>FOC Control</td>
<td>High</td>
<td>Low</td>
<td>Moderate</td>
<td>Moderate</td>
<td>Moderate</td>
<td>Moderate</td>
<td>Low</td>
</tr>
<tr>
<td>Research CESS Fees</td>
<td>None</td>
<td>0.5%</td>
<td>0.5%</td>
<td>0.5%</td>
<td>0.5%</td>
<td>0.5%</td>
<td>None</td>
</tr>
<tr>
<td>Export Duties</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>None</td>
</tr>
<tr>
<td>Bonus</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Based on Performance</td>
</tr>
<tr>
<td>Decommissioning</td>
<td>FOC</td>
<td>FOC</td>
<td>FOC</td>
<td>FOC</td>
<td>FOC</td>
<td>FOC</td>
<td>PETRONAS</td>
</tr>
</tbody>
</table>

FOC: Foreign Oil Company; PITA: Petroleum Income Tax Act; CITA: Companies Income Tax Act
It can be analyzed from Table 3 that there is no one fiscal regime that is better than another in general terms. Each one has its benefits and drawbacks. The recent RSC gives investors more specific benefits and advantages. First, the RSC avails low risk to investors compared to other fiscal arrangements. In fact, in a situation where the contract duration expires and the investor company has not fully recovered its cost, the company would be reimbursed any balance unrecovered after the project completion. In addition, the RSC guarantees a cost recovery limit of 100% and up to 120% of incurred cost. The RSC also enables investors to receive cash flow early in the project due to the accelerated capital allowance. The fact is that the higher the costs allowed for deduction from gross revenue, the lower the net profit, and eventually the tax liability. The extra cash flows generated due to reduced tax liability will enable the investor to reinvest in other profitable projects. The RSC also enables the transfer of costs between noncontiguous partnerships and sole proprietorships. This is not provided for under other forms of operating arrangements. Second, the RSC does not impose royalty payments on investors because it is a service-based arrangement.Ordinarily, under each fiscal arrangement in Malaysia, a royalty of 10% must be paid on gross revenue. By implication, waiver of the royalty will improve the investors’ per barrel fee. Third, the RSC guarantees a low tax rate of 25% to investors as compared to 38% under other fiscal arrangements. Paying CIT is favored by investors compared to PIT, especially in relation to deductible expenses. Fourth, the RSC waives payment of Research CESS of 0.5% by the investor which is still being paid under other fiscal arrangements. Under the PSC, the research CESS fees are paid on gross revenues, comprising both cost oil and profit oil received by investors from oil and gas activities. Fifth, the RSC also gives investors an export duty waiver for oil produced from marginal oil fields. In other arrangements, investors have to pay an export duty of 10% for oil produced in Malaysia but exported abroad. Sixth, the RSC arrangement highlights the possibility of a performance bonus to investors based to their CAPEX and production output. This is because although the fee per barrel is on a fixed rate, it is subject to actual performance. Seventh, the RSC waives the decommissioning obligation for investors. In the RSC arrangement, it is the responsibility of PETRONAS to incur all costs required for dismantlement of the oil and gas installation, as well as the restoration of the environment after the closure of activities. This is contrary to other arrangements in which decommissioning costs are the responsibility of the investor.

Conclusion

Based on the existing literature, Malaysia has been perceived as a country with a relatively rigid petroleum fiscal regime in its oil and gas
industry based on international comparison. Recent studies show that Malaysia’s fiscal regime is becoming less-stiff due to continuous adjustments. Domestic comparison within Malaysia also reveals that the fiscal regime has been experiencing a series of modifications since 1976 with the most recent modification coming in 2010 for marginal oil fields. This analysis indicates that the fiscal regime is softening its stance in favor of investors, especially under the most recent RSC arrangement. Therefore, this paper can be bedrock for future analyses regarding petroleum fiscal regimes in Malaysia. More specifically, the paper provides a framework for domestic comparison of fiscal regimes in terms of both GT and CT. The paper also provides an account of the petroleum fiscal regime in Malaysia which has not been addressed comprehensively in previous literature.

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