

Dutch Senate passes bill amending the *Mining Act* related to the removal or re-use of mining works and investment deductions

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Executive summary

On 26 January 2021, the Dutch Senate passed the bill to amend the *Mining Act*¹ to further stimulate investments in the Dutch Mining industry. The bill also intends to prevent that natural gas reserves are left behind when existing infrastructure is being decommissioned.

This bill clarifies, and complements, the provisions of the *Mining Act* concerning the removal and re-use of the infrastructure used for mining activities and the financial collateral to be provided in that context. The bill also introduces compulsory decommissioning agreements and could potentially provide for new opportunities for market players to re-assess their Dutch Exploration and Production (E&P) asset portfolio.

The bill will enter into force at a time still to be determined by Royal Decree. The Royal Decree may include the possibility for retroactive effect for the investment tax allowance until 1 January 2020.

Detailed discussion

Changes to the *Mining Act*

Under the *Mining Act*, companies with mining activities operating in the Netherlands have the obligation to pay certain specific contributions to the State, such as State Profit Share Tax. State Profit Share tax (SPS) is levied on the (co-)owner of a production license. The tax base is ring-fenced and includes profits attributable to exploration and production activities only. SPS is calculated on a broadly similar tax base as Corporate Income Tax (CIT). This additional levy leads to a higher effective tax burden for mining companies. To further stimulate investments for the exploration and extraction of hydrocarbons (gas and oil) at sea in the Netherlands, the *Mining Act* provides for an investment deduction. This deduction initially only applies to investments in marginal gas fields at sea. In order to slow down the rapid decline in the detection and extraction of the remaining gas and oil reserves, this bill also includes an increase and broadening of the current investment allowance.

Although the use of renewable energy sources is increasing during the energy transition, the Dutch Government recognizes that the Netherlands will still have to rely on natural gas resources in the coming years as well, also considering stop of production from the Groningen gas field. Own natural gas production in this respect is preferred by the Government over the import of gas. The production in future years should also come from smaller Dutch (and undiscovered/undeveloped) fields. The investment deduction can contribute to the attractiveness of new investments.

However, many gas fields are moving towards the late life stage of production. Considering the total estimated decommissioning costs of around €7 billion, the Government now has also introduced additional legislation to make sure that (financial) obligations regarding the decommissioning are being met by the parties involved.

Investment tax allowance increased and broadened

In order to further stimulate investments in the Dutch Mining industry, and to avoid that natural gas reserves are left behind when existing infrastructure is being decommissioned, the bill provides for an increase of the investment allowance for SPS purposes from 25% to 40%.

In addition to the rate increase, the scope of the investment facility is broadened in the following manner:

- ▶ The conditional small field investment allowance is changed to a generic investment allowance (upfront approval to claim the allowance is therefore no longer required, said approval process took a year on average).
- ▶ The investment allowance now also applies to onshore investments (which for example also includes investments in geothermal infrastructures and salt extraction) even though parties have committed to only apply the allowance to offshore investments.
- ▶ The scope is broadened to investments in all "mining works" as defined in the *Mining Act*.
- ▶ The investment allowance is broadened to also include amendments and improvements of existing mining works (but still excluding maintenance).

The amended bill is intended to prevent the early dismantling and removal of oil and gas infrastructure due to lack of economic perspective, by making investments in the Netherlands financially more attractive. Moreover, it should result in an increase of the annual production of Dutch natural gas in future years.

Introduction of obligatory decommissioning agreements

A set of two agreements with respect to decommissioning obligations were developed for offshore production licensees. It will become compulsory for production licensees to enter into a set of agreements:

- ▶ Decommissioning Security Agreement (DSA)
- ▶ Decommissioning Security Monitoring Agreement (DSMA)

The DSA is to be agreed upon between the operator and the other licensees and arranges the timing and the form of financial security between licensees to ensure the operator can successfully charge the decommissioning costs to the other license holders. The DSA will be re-assessed annually.

Based on the DSMA, an agreement between Energie Beheer Nederland BV (EBN) and all license holders, the execution of the DSA agreement will be monitored by EBN to safeguard the financial securities and to inform and advise the Minister of Economic Affairs and Climate Policy accordingly. In its letter of 14 December 2020, the Dutch Secretary of State has provided further details on how a transparent and robust framework for financial guarantees will be established.

Further to the introduction of decommissioning agreements, some other updates and amendments are included in the bill as well. In principle, decommissioning of mining works should take place if the mining work is no longer in use. Based on the bill, a decommissioning plan has to be filed within one year for mining works that are no longer in use. An exemption may apply if the mining works may be re-used (e.g., for CO₂ storage).

With the introduction of the Decommissioning agreements to further strengthen financial securities of parties regarding their decommissioning obligations, it should be considered whether this might also provide for new opportunities for parties to re-assess their current (late life assets) portfolio and may provide possibilities for new parties such as Oil Field Service companies to enter the Dutch E&P market. The formal agreements may provide for new possibilities to leave (part of) the abandonment provision with the seller.

Implications

Tax costs can be a deal breaker in the sale of Dutch E&P assets considering the release of the fiscal abandonment provision for the seller in an asset deal (in principle resulting in a taxable event for both CIT as well as SPS tax for the seller).

Endnote

1. The bill was submitted to the Lower House of Parliament on 19 May 2020.

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