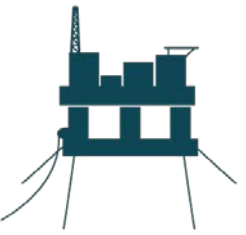


GLOBAL OFFSHORE

B R A Z I L
S U M M I T



New Repetro & Tax Issues – Withholding and the Impact on Nationalization of Overseas Equipment

Júlio Chamarelli de Cepêda

KPMG



Agenda

I. Repetro x Repetro-SPED

- Main Changes
- Challenges
- Tax Issues

II. Tax Strategies

- Dutch Cases

III. Other Tax Issues

- ICMS

IV. Split Contracts

- Tax Benefit
- Main Changes
- Other Rules

Repetro x Repetro-SPED

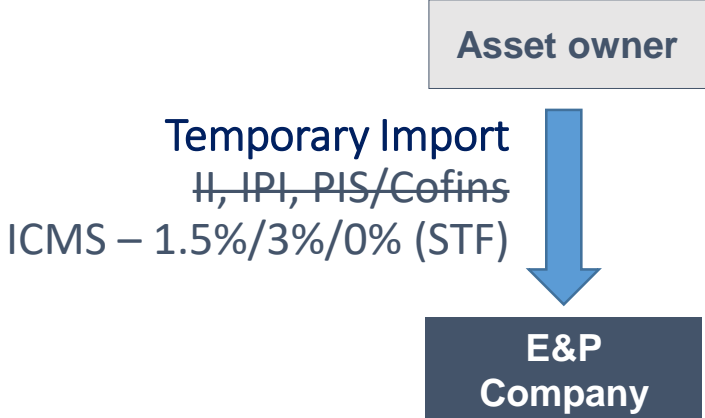
Main Changes

Article 5th of Law 13,586/2017: Definitive Import Regime

Article 6th of Law 13,586/2017: Repetro-Manufacturing

Repetro x Repetro-SPED

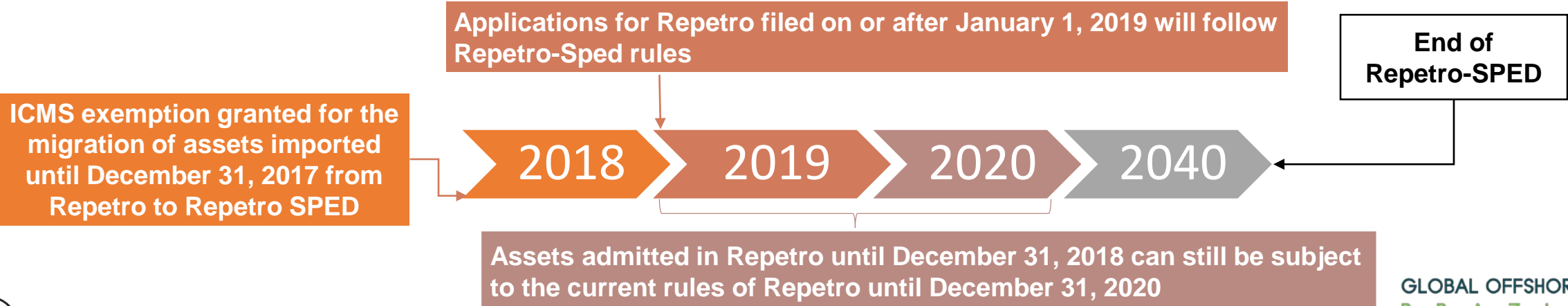
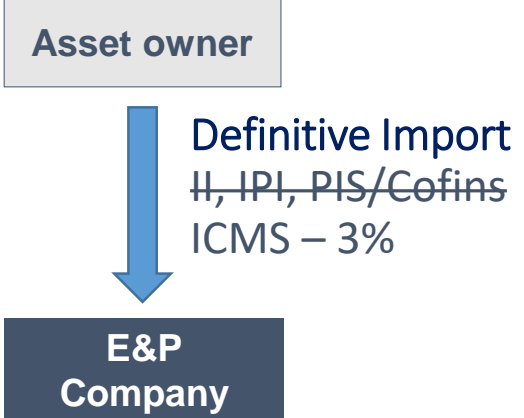
Main Changes



What's new?



A list describing which items must be imported under the Definitive regime (Annex I of IN 1,781)



Repetro x Repetro-SPED

Main Changes

What about the lists?

Two lists are provided:

- i. 1st list comprises the items benefitting from the tax relief on permanent importation only;
- ii. 2nd list describes the items that may benefit from the tax relief on permanent or temporary importation.

It is key to examine on which list the assets are!

Warning!
FPSO's and Production Platforms are listed in Annex I (definitive regime)

Few Exceptions!

FPSO's and Production Platforms can stay under the temporary admission regime, if:

- a) The corresponding charter, lease or rental agreement is executed **at the same time** as the agreement for the operating services of the platform or FPSO between unrelated parties (i.e. the lessor and operating companies under these contracts **cannot be related to the contracting concessionaires which hold the production rights**); or
- b) The Production Platforms and FPSO's are used on a temporary basis (up to 4 years) in oil and gas fields for production tests or anticipated production systems.



Repetro x Repetro-SPED

Challenges



What's the challenge?

- i. Under the new REPETRO Sped regime non-Brazilian companies owning FPSO's and Production Platforms used in Brazil can as **from 2020** no longer benefit from the temporary tax suspension granted by Repetro.
- ii. Definitive regime must apply and the assets **shall be nationalized until 2020.**

What would be the impacts of transferring/selling the FPSO's and Production Platforms to a Brazilian based company?



Repetro x Repetro-SPED

Tax Issues

Valuation

Under Brazilian tax law the FPSO and production platform migrating to the definitive importation can only be valued against **book value** in the accountings of the owner the asset

Capital Gain

The current non-Brazilian owner might be confronted with a capital gain (difference between market value and book value)



How to deal with this mismatch of legislation?

As a result double taxation could occur and cash tax liability in the country the asset is currently owned



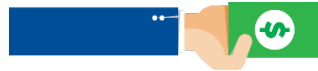
Tax Strategies

Dutch cases - I

Early termination
of bareboat
agreements



Early termination
fees



Fair market value of
offshore vessels,
platforms and
equipment would
be required.



Valuation is Key!



Typical technical discussion topics regarding the valuation of assets and/or early termination payments include:

- No market for mid-life permanent offshore production assets;
- Assets engineered for a specific location and field characteristics for the duration of production;
- Assets hard to move, no active market other than against scrapping value;
- Difficulties in valuation of assets under construction;
- Intercompany leasing agreements not always up to par, interpretation or actual conduct to be considered.

Opportunity



Best approach depends on the position of the tax payer (operator, majority/minority shareholder, consortium) and its tax situation (tax losses, tax grouping, etc.)

The analysis must be carried out on a case-by-case basis

It is recommended a proactive approach towards local Tax Authorities

Tax Strategies

Dutch cases - II



Reinvestment Reserve

- The gain on disposal of depreciable assets may be carried over to a special tax deferral reinvestment reserve but must then be deducted from the acquisition cost of the later acquired assets.
- Except in special circumstances, the reserve cannot be maintained for more than three consecutive years. If the reserve has not been fully applied after three years, the remainder will be liable to taxation.
- This strategy is rooted in the “replacement concept”: no profits will be realized if assets are replaced and, economically, the replacement assets have the same function in the company.

Opportunity



This facility could be considered in case the owning entity, or the tax group to which it might belong, also operates (or intends to) FPSO's or production platforms in other jurisdictions

It is recommended a proactive approach towards local Tax Authorities

Other Tax Issues

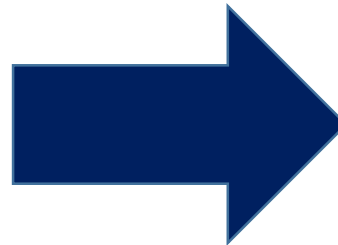
ICMS

ICMS Covenant nº 03/2018

ICMS exemption granted for the migration of assets imported **until 31/12/2017** from Repetro to Repetro SPED

Normative Instruction nº 1,796/2018

Assets admitted under Repetro regime until 31/12/2018 can migrate to Repetro-SPED regime during the calendar year of 2018



ICMS Time Gap

There is a risk of ICMS taxation for the goods that were imported **after 31/12/2017 and before 31/12/2018** that migrated from Repetro to Repetro-SPED

Other Tax Issues

ICMS

Applications for Repetro filed on or after January 1, 2019 will follow Repetro-Sped rules

End of Repetro-SPED

ICMS exemption granted for the migration of assets imported until December 31, 2017 from Repetro to Repetro SPED

2018

2019

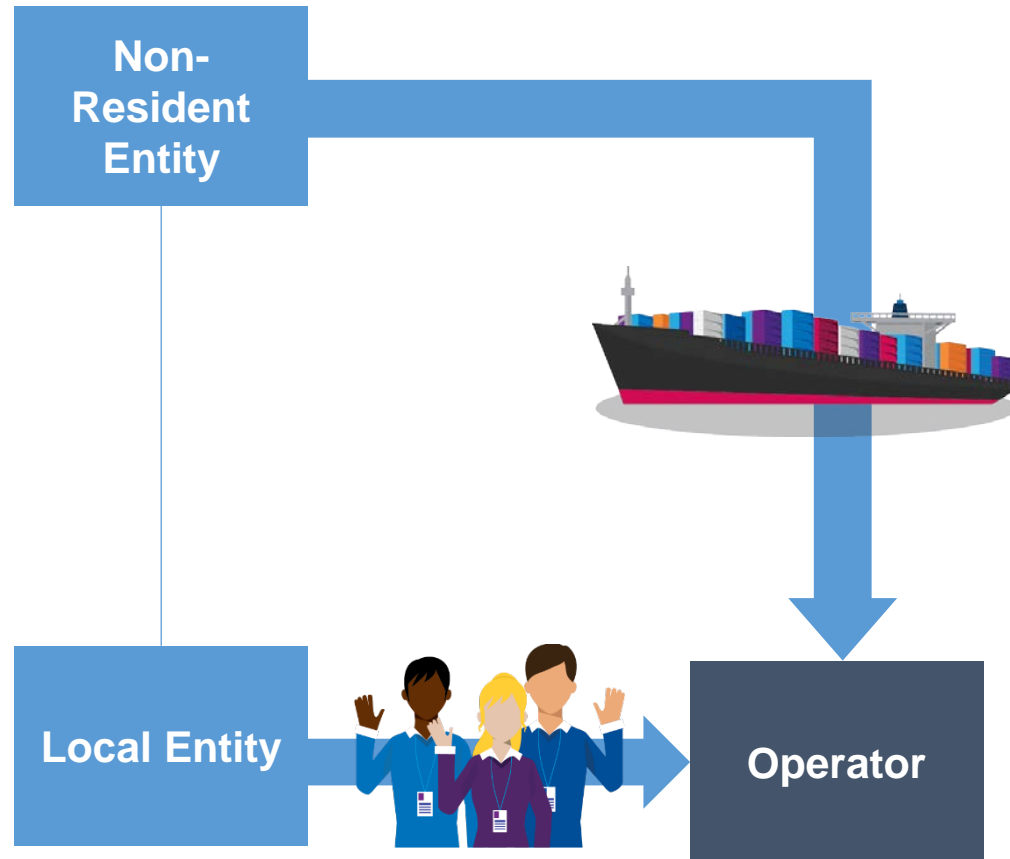
2020

2040

Assets admitted in Repetro until December 31, 2018 can still be subject to the current rules of Repetro until December 31, 2020

Split Contracts

Tax Benefit



➤ Split Contract

Charter contract simultaneously executed with a service contract and where the Charterer and the Service Provider are considered related parties.

➤ Tax Benefit

There is a withholding tax (WHT) exemption applied to payments made to a non-resident in respect to the charter agreement.

➤ Limits

The contractual splits must be in accordance with the limits established in Law nº 13,586/2017 for the application of the WHT exemption.

Split Contracts

Main Changes

Vessels	Law 9,481/1997 (1997-2014)	Law 13,043/2014 (2015-2017)	Law 13,586/2017 (2018)
FPSOs	-	85%	70%
Drilling rigs	-	80%	65%
LNG-related vessels	-	65%	60%
Other vessels	-	65%	50%

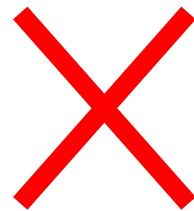
Split Contracts

Other Rules

- The limits imposed by tax legislation disregard the effects of exchange variation
- The vessels used in contracts related to transportation, shifting, transfer, storage and regasification of LNG will be subject to the percentage of 60%.
- The limits imposed by the tax legislation do not apply to charters of vessels used in maritime support navigation



In the event of any renegotiation or readjustment of contractual amounts, the new limits and conditions established in Law 13,586 shall be respected



Triggering event of the WHT is the remittance of payments due from the charter agreement

Thank You !

Júlio Chamarelli de Cepêda

icepeda@kpmg.com.br

KPMG

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

