

Most Of BP's \$20.8 Billion Deepwater Horizon Fine Is Tax Deductible

By Charles Kennedy October 7, 2015 12:24 PM

The U.S. Justice Department touted its historic settlement^[1] with BP over charges related to the Deepwater Horizon disaster in 2010. BP will be forced to pay \$20.8 billion, the largest settlement ever reached with a single entity. “BP is receiving the punishment it deserves,” U.S. Attorney General Loretta Lynch said in a statement.

But is it really?

BP will be able to write-off three-quarters of the total, taking a tax deduction on \$15.3 billion of the total, as Robert W. Wood points out in Forbes^[2]. Only \$5.5 billion out of the \$20.8 billion total is not eligible for a tax deduction, as those charges stem from a Clean Water Act violation.

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Due to quirks in the tax code, the “historic” settlement is not as significant a penalty as the U.S. government is making it out to be. It is normal for companies to deduct the business costs. Even litigation costs are often tax deductible. Violations of law, however, are often in murky territory. Sometimes there needs to be explicit language in settlements that bars companies from writing off penalties paid to the government.

It appears that BP will be able to deduct quite a bit of its settlement with the U.S. government. In this way, it is essentially treated as any other cost of doing business. Similarly, the \$32 billion that BP spent to clean up the Gulf area following the massive oil spill was also tax deductible, costing U.S. taxpayers \$10 billion.

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Obviously, BP will do everything within its power to pay as little as possible. So, the fact that it will write off a significant portion of its settlement with the Justice Department is the fault of the U.S. tax code. Changes to the code would be needed to prevent companies from deducting penalties.

Also, some blame should be reserved for the Justice Department itself for trumpeting the settlement as a “historic” win. The Justice Department routinely boasts of large settlements with corporate offenders, with headline-grabbing fines. But the agency doesn’t necessarily discuss the fact that companies won’t actually be impacted as severely as the huge figures suggest. A 2014 report^[5] from U.S. PIRG highlights several settlements between the Justice Department and big banks in recent years that resulted in large settlements that ended up being tax deductible.

By Charles Kennedy of Oilprice.com

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