Tax News Flash

October 2016

Revised Income Tax on Income from Transfers of Land and/or Building Rights and Land and/or Building Sale and Purchase Contracts and Amendments thereof – new Government Regulation No 34 Year 2016 (“GR34”)

On 8 August 2016 the Government of Indonesia issued GR34, effective 7 September 2016, replacing Government Regulations No. 48 Year 1994 (”GR48”) and No. 71 Year 2008 (”GR71”).

Below we discuss the contents of the new Regulation.

Final Tax Rates

Rate comparison - these rates apply to the gross value of the transfers:

Type of transfers	GR48 and GR71	New GR34
For transfers other than for basic houses or flats (*Rumah Sederhana atau Rumah Susun Sederhana*) made by a Taxpayer whose main business is transferring land/buildings (e.g., a real estate/developer company)	5%	2.5%
For transfers of basic houses or flats made by a Taxpayer whose main business is transferring land/buildings	1%	1%
For transfers to the national government or regional governments given a special assignment by a local municipality as stipulated by the law to supply land for development for public interests	Exempt	0%
For buyer’s name that is stated in a binding sale and purchase agreement (*perjanjian pengikatan jual beli or* ”PPJB”) before amendment or addendum of the binding sale and purchase agreement	Not clearly regulated	2.5%

Transfer Values

The transfer value of land and/or buildings used to calculate the final tax payable is as follows:

- If the transfer is made to a government institution, it is based on the decision of the authorized official;
- If an auction, the value is based on the auction report;
- If the transfer involves related parties, the value must be determined on an arm's length basis (i.e., the value that would be received based on its market value);
- If the transfer involves non-related parties, the value is the actual value received; or
- If an exchange, a rights release or surrender, a gift, an inheritance or any other arrangement that is agreed to between the parties, the value must be the value that would be received based on market value.

Final Tax Payment Obligations

1. Individuals and entities receiving or earning income from the transfer of land and/or building rights must pay the tax themselves, before an authorized official (normally a notary or auction official), who signs the documents (deeds, decisions, agreements or tender summaries) regarding the transfer of rights.
    - These documents can only be signed after the payment of the tax payable.
    - The Tax Payment Slip (SSP) or other forms which are equivalent with the SSP must be attached.
2. For individuals and entities whose main income comes from the transfer of land and/or building rights (i.e., developers or real estate companies), revenue is taxable when the payment has been received, either in full or partially, such as a down payment, interest and any other levies that must be paid by the buyer.
3. Individuals and entities receiving or earning income from the transfer of land and/or building rights through a sale and purchase or swap arrangement with the Government are subject to this income tax obligation. The final tax

payable is imposed by the State Treasurer or the Authorized Official who makes the payment or the Authorized Official who approves the swap arrangement.

4. Settlement of the final tax payable from any changes or amendments to a binding sale and purchase agreement (PPJB) on land and/or buildings must be made by the individuals or entities listed in the initial binding sale and purchase agreement before the finalization of the amendment or addendum of the binding sale and purchase agreement.

Exclusions from the Obligation to Pay or Collect Final Income Tax

- Individuals earning income below the non-taxable income threshold, who transfer land and/or building rights with a gross transfer value of less than Rp 60 million and the sum has not been split;
- Individuals transferring land and/or building rights by means of grants to family members of the same blood relations in one degree of lineage, religious institutions, educational institutions or social agencies, as long as the grant has nothing to do with a business, job, ownership or control among related parties;
- Entities transferring land and/or building rights by means of grants to religious institutions, educational institutions or social agencies, as long as the grants are not related to a business, job, ownership or control among the related parties;
- The transfer of land and/or building rights is due to inheritance;
- Entities transferring land and/or building rights related to mergers, acquisitions or spin offs approved by the Minister of Finance (i.e., approval to transfer at book value);
- Individuals and entities transferring buildings in order to implement built-operating-transfer arrangements with the Government or Government asset utilization agreements in the form of land and/or buildings; and
- Individuals and entities who are excluded as a taxpayer and transfer assets in the form of land and/or buildings.

KPMG Comments:

The 50% reduction of the final income tax rate from 5% to 2.5% reflects the Government's intention to help boost the property market in Indonesia.

All taxpayers should declare actual transaction values, especially post tax amnesty, as the Tax Office will check tax returns more thoroughly and use other information to detect any non-compliance.

There should be implementing regulations released by the Minister of Finance to provide more guidelines to GR34. While waiting for those guidelines, we note the following:

- Capital gains treatment on transfers using the PPJB

  Previously, gains on the transfer of land and/or buildings using the PPJB were not clearly regulated and under the Tax Office's Circular No. SE-30/PJ/2014, these gains would be taxed under the normal income tax rules. Under new Regulation GR-34, it is clear that these capital gains fall within the scope of the final income tax. This means that such gains should no longer be taxable under the normal income tax rules.

- Reconciliation requirements for real estate companies/developers

  As this final tax is payable on any payments received on the sale of land and/or buildings (in the form of down payments, interest and any other levies), reconciliations between the final withholding tax returns, financial statements, corporate tax returns and Value Added Tax returns must be prepared monthly to avoid discrepancies which could lead to tax penalties in a tax audit.

Contact us

KPMG Advisory Indonesia
Tax Services
33rd Floor, Wisma GKBI
28, Jl. Jend. Sudirman
Jakarta 10210, Indonesia
T: +62 (0) 21 570 4888
F: +62 (0) 21 570 5888

Abraham Pierre Wenang
Partner In Charge, Tax Services
Abraham.Pierre@kpmg.co.id

Eko Prajanto
Eko.Prajanto@kpmg.co.id

Herry Iskandar Pramana
Herry.Pramana@kpmg.co.id

Ichwan Sukardi
Ihwan.Sukardi@kpmg.co.id

Jacob Zwaan
Jacob.Zwaan@kpmg.co.id

Roy Sidharta Tedja
Roy.Tedja@kpmg.co.id

Sutedjo
Sutedjo@kpmg.co.id

Anita Priyanti
Anita.Priyanti@kpmg.co.id

Bambang Budiman
Bambang.Budiman@kpmg.co.id

Irwan Setiawan
Irwan.Setiawan@kpmg.co.id

Steven Derek Solomon
Steven.Solomon@kpmg.co.id

Tonggo Aritonang
Tonggo.Aritonang@kpmg.co.id

Iwan Hoo
Iwan.Hoo@kpmg.co.id

Esther Kwok
Esther.Kwok@kpmg.co.id

Natalia Yamin
Natalia.Yamin@kpmg.co.id

Yoshiyuki Misao
Yoshiyuki.Misao@kpmg.co.id

kpmg.com/id