

# Indonesia Regulatory Update

June 2017



## Regulatory Highlights

This publication sets out to highlight at summary level, some of the key current regulatory changes in Indonesia. These important changes have implications for industry, covering a wide range of industries and within these, specific and complex business processes. For further details on any of the items covered, a listing of KPMG Contact Points for further discussion is included at the end of the document. Hyperlinks to the source documentation (Bahasa Indonesia for most items) are provided as appropriate.

**Regulatory updates covered in this publication are as follows:**

- Amendment to Government Regulation Number 79 of 2010 concerning Cost Recovery and Provisions on Income Tax in Upstream Oil and Gas Activities.
- Amendment on Ministry of Finance Regulation No. 70/PMK.03/2017 on Technical Guidance for Access to Financial Information for Tax Purposes.
- Financial Holding Company.
- Certificate of Domicile for Domestic Taxpayers for the Implementation of Double Taxation Avoidance Agreement.

## Energy and Natural Resources

**Amendment to Government Regulation Number 79 of 2010 concerning Cost Recovery and Provisions on Income Tax in Upstream Oil and Gas Activities.**

Government issued regulation no. 27/2017 ("GR 27") regarding Amendment to Government Regulation Number 79 of 2010 concerning Cost Recovery and Provisions on Income Tax in Upstream Oil and Gas Activities, which revoke the previous [Regulation No.79/2010](#). The regulation has come into effect as of 19 June 2017.

An overview of new matters introduced in GR 27 is provided below:

- Transitional provision available until 19 December 2017. All Production Sharing Contract ("PSC") signed before the introduction of GR 79 are expected to fully comply with the provisions of GR 27. However, the government cannot force to follow this regulation as it has to respect the contracts in place. Therefore, the government is providing contractors an option to "voluntarily" comply with this regulation. A number of business, legal and tax issues need to be assessed before any contractor opts to voluntarily comply with this regulation and subsequently adjust its existing contract.
- Some incentives are introduced in this regulation, including upstream incentives, tax incentives, and non-state revenue incentives.
- A new provision on the "sliding scale split" is introduced in GR 27 article 10A states that the Ministry may determine the amount of sliding scale split intended to share profits and risks.
- A number of negative list of cost recovery items have also been amended to include:
  - i. confirmation that costs in relation to LNG process at exploitation stage are considered as cost recovery,
  - ii. community development costs during exploitation stage have now also been confirmed as cost recovery items, and
  - iii. several negative list of recovery items have also been amended.
- The tax facilities granted to the Contractor at both Exploration and Exploitation stage during the operations, such as taxation on importation and land and building tax exemption.
- Confirmation that no income tax and VAT should be payable on sharing facilities and head office costs allocation.



- GR 27 confirms that no further tax is payable after 20% tax on uplift and 5% or 7% tax on the transfer of participating interest. It means that no branch profit tax is payable as currently apply on any profit after tax of both income from uplift and transfer of participating interests.
- Some tax administrative issues such as tax audit, issuance of assessment, and reporting are also revised to be consistent with contract and general tax provisions.

In summary, GR 27 clarifies and resolves some long disputed industry issues, such as cost sharing head office costs, and land and building tax, which are good for existing contractors and also the investment climate within the upstream oil and gas industry. However, GR 27 has not entirely removed all uncertainties as was intended, especially when discussing the requirements to adjust and comply with current regulations. Although contractors are given an option to comply, however, we anticipate different interpretation will arise from non-voluntarily compliance under transitional provision.

Detailed analysis to this regulation is available in our ENR tax publication.

(Issued regulation in Bahasa: [Regulation no.27/2017](#))

## Financial Services

### Amendment on Ministry of Finance Regulation No. 70/PMK.03/2017 on Technical Guidance for Access to Financial Information for Tax Purposes

Minister of Finance ("MoF") issued regulation No.73/PMK.03/2017 regarding Amendment on MoF regulation [No. 70/PMK.03/2017](#) ("MoF 70") on Technical Guidance for Access to Financial Information for Tax Purposes to revoke the previous regulation No. 70/PMK.03/2017. This regulation has come into effect as of 12 June 2017.

MoF 70 had initially set out a number of different minimum thresholds for financial accounts which were required to be reported by financial-service institutions, other service institutions and other entities either through domestic disclosure of financial information mechanism or Automatic Exchange of Information ("AEoI") mechanism.

In terms of the domestic disclosure mechanism, MoF 73 amends the minimum threshold for reported financial accounts under financial-service institutions to IDR 1 billion from previously IDR 200 million, which apply to bank (for financial accounts owned by individual), insurance, and cooperative. No minimum threshold is applicable for capital markets, future trading, and financial accounts owned by entities.

With relation to AEoI mechanism, MoF 73 further clarifies additional exception on the compulsory

preexisting financial accounts to be reported. According to MoF 73, all pre-existing financial accounts (i.e. any accounts which were opened prior to 30 June 2017) which do not exceed USD 250,000 as of 30 June 2017, 31 December 2017, and 31 December of each subsequent year after 2017 are exempted from the reporting requirement.

Financial-service institutions are required to report the financial information for every identified reportable financial account to Director General of Tax ("DGT") in accordance with Common Reporting Standard ("CRS").

Under this regulation, DGT has the authority to access and request information, evidence or statements from financial-service institutions either through manual mechanism or through electronic mechanism. The first report, which is due by 30 April 2018, shall disclose financial information per 31 December 2017.

(Issued regulation in Bahasa: [MoF Regulation no.73/PMK.03/2017](#))

### Financial Holding Company

Financial Service Authority ("OJK") is currently preparing a regulation on Financial Conglomeration Holding Company.

The Main Entity concept under current regulation is not in line with the international practice, thus is necessary to be revised. The designation of Main Entity is to integrate, amongst others, the risk management, governance, and capital of financial-service institutions in a group. This is a temporary approach as Indonesia does not have regulation regarding holding company, in particular, financial holding company.

The draft regulation introduces new definition of financial conglomeration, and requires determination or establishment of financial holding company to replace the existing Main Entity under current regulation. The financial holding company is a legal entity established and/or owned by the controlling shareholders or ultimate controlling shareholders. The financial holding company will consolidate and directly control the activities in the financial conglomeration.

According to the draft regulation, the criteria of financial conglomeration:

- Hold two or more financial institutions, for instance, bank, capital market, insurance, multi-finance, or other financial institutions.
- Own total asset with an amount at least equal or more than IDR 2 trillion.

Entities included in a financial conglomeration can be non-financial institutions as determined by OJK.

Financial statements of financial holding company must be audited by an independent auditor.

Under the draft, the controlling shareholders or ultimate controlling shareholders are required to make all necessary adjustments to comply with the regulation at the latest by 1 January 2019.

(Draft regulation in Bahasa: [Rancangan POJK Perusahaan Induk Konglomerasi Keuangan](#))

### Taxation

#### Certificate of Domicile for Domestic Taxpayers for the Implementation of Double Taxation Avoidance Agreement

DGT issued regulation No. PER-08/PJ/2017 regarding Certificate of Domicile ("CoD") for Domestic Taxpayers ("Surat Keterangan Domisili bagi Subjek Pajak dalam Negeri" – "SKD SPDN") for the Implementation of Double Taxation Avoidance Agreement. This regulation revokes [PER-35/PJ/2010](#) (PER 35) and has come into effect as of 12 May 2017.

The new regulation requires further information on offshore counterparts including the transaction amount to be included in the CoD letter. CoD will be valid for 36 months after the issuance date for financial services and 12 months for non-financial services.

This regulation required domestic taxpayer to submit an application along with the mandatory requirement to the tax office where it is registered in order to obtain the CoD. CoD application could be made for:

- Current year period: taxpayer is required to submit the latest Article 25 Monthly Tax Return or Article 4(2) Final Tax Return which has already due upon the submission of CoD application.
- Prior year period: taxpayer is required to submit the latest Article 25 Monthly Tax Return or Article 4(2) Final Tax Return if the CoD application is submitted prior to the deadline of Annual Income Tax Return ("AITR"), or have submitted the AITR extension if the CoD application is submitted after the AITR deadline.

The new regulation amend the working days needed to process the CoD application to 10 working days (previously 5 working days) after the submission period. CoD application or Special Form ("Formulir Khusus") issued before 12 May 2017 is still applicable under the previous regulation (PER 35) until the end of the validity period. Ongoing CoD which was applied prior to 12 May 2017 will be concluded based on PER 35.

(Issued regulation in Bahasa: [PER-08/PJ/2017](#))\*

\*Note: Issued regulation has not been published on DGT website.

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