

Global Mobility Services Bulletin

December 2017

I. DGT Compliance Supervision Post - Tax Amnesty Program

General

Following the expiration of the Tax Amnesty Program ("TAP"), the Indonesian Tax Authority issued Circular Letter No. 20/PJ/2017 on 24 August 2017 providing guidelines on "Compliance Supervision" activities which will be carried out:

- a. In the framework of the TAP; and
- b. General Observations ("GO").

Circular letter No. 20 stipulates that, under the TAP, there will be a 'prioritized supervision' for the following taxpayers:

1. For those taxpayers who did not participate in the TAP, the focus will be on discrepancies between assets declared and based on external and/or internal data available within the Tax Authority's information system¹; and
2. For those taxpayers who participated in TAP, the focus will be on:
 - i. Tax compliance obligations after 31 December 2015; and
 - ii. Any discrepancies between assets declared in the TAP, as well as discrepancies in values declared, the tax amnesty levy calculations and taxpayers' reports.

The GO reviews will focus on tax compliance obligations on all taxes:

1. For non-TAP participants: in accordance with the prevailing tax law and regulations; and
2. For TAP participants: for tax years/periods after 31 December 2015.

Actions on Non-TAP Participants

Supervision of Non-TAP participants is carried out through studying and comparing internal and external information on taxpayers' assets based on taxpayer's annual tax returns, data obtained based on site visits and data obtained from the internet, institutions, associations and/or other parties. This supervision may be followed up with a tax audit if the information obtained shows "discrepancies" or "inconsistencies".

Tax audits of non-TAP participants can only be done if the tax audit instruction letters are issued before 1 July 2019.

GO, however, focus on tax compliance of all types of taxes for any open tax year/period within 5 years from when the tax becomes due or the end of tax period/tax year.

¹ Article 35(a) of the General Provisions and Tax Procedures ("KUP") authorizes the Directorate General of Taxes ("DGT") to collect data and information by requiring agencies, institutions, associations and other parties, both government and private, to provide data and information to the DGT. To implement this, DGT has signed various Memorandums of Understanding with various institutions, such as the Ministry of Finance, the Authority of Financial Services ("OJK"), the Capital Investment Coordinating Board ("BKPM") and the Indonesian National Police ("POLRI") to obtain information regarding taxpayers. The DGT has developed an Integrated Information system to accumulate all this incoming information. (source: <https://news.microsoft.com/id-id/2017/02/28/direktorat-jenderal-pajak/>, <http://www.pajak.go.id/content/article/reformasi-teknologi-informasi-perpajakan>)

Actions on TAP Participants

Supervision will be done by studying and analyzing Tax Amnesty documents, focusing on the assets therein, and monitoring the taxpayer's assets in Gateway's reports, as well as:

1. Information regarding taxpayers' assets in taxpayers' reports regarding completion of repatriation and investment of the assets in Indonesia and the placement of assets located within Indonesia;
2. Information regarding assets, income, expenses and compensation declared by taxpayers in their annual and monthly tax returns; and
3. Information regarding assets and income obtained from external/internal sources.

For individuals, supervision is prioritized on assets declared in their Tax Amnesty Declarations which may be income producing assets. This information can be retrieved from the transfer of title of immovable property, such as land and/or buildings, shares and/or assets owned indirectly through special purpose vehicles.

If based on analysis there are mismatches of information, the Tax Office/Account Representative can issue warning letters to the taxpayers which must be responded to on a timely basis. Failure to respond to the warning letters may result in the Tax Office conducting audits of the taxpayers.

In addition, TAP participants may also be subject to GO regarding their tax compliance for all types of taxes for the tax years/periods after 31 December 2015.

The implementation of both TAP supervision and GO for TAP participants and non-participants is in accordance with Circular Letter No. 39/PJ/2015. In summary, this Circular Letter provides an authority for the Tax Authority to request explanations, obtain information and/or make site visits to taxpayers. Any taxpayers who do not respond to these requests, provide direct or written responses but have not filed tax returns or have filed tax returns with tax calculations not in accordance with the tax authority's analysis or do not agree with the tax authority's analysis, can be subject to further verifications, audits or preliminary investigations.

KPMG Note:

As part of the effort to increase tax revenues to meet the country's infrastructure and development requirements, this is another measure for the Indonesian Tax Authority to ensure potential "revenue" is collected from taxpayers, both TAP participants and non-TAP taxpayers. With this on-going supervision, the Government aims to increase taxpayer compliance level.

II. What Net Assets Can Be Considered as Taxable Income

The Indonesian TAP has had significant economic and social impacts. However, the Indonesian Tax Authority believes the results of the TAP indicate that the declaration and repatriation of offshore assets was not consistent with the data of taxpayers' assets outside the country. In addition it believes there are taxpayers in the country who have not fully disclosed their domestic assets in their TAP declarations or annual tax returns.

Taking into account these conclusions, the Government has issued several regulations for tax enforcement following the completion of the TAP, including Government Regulation No. 36 Year 2017.

Pursuant to this regulation, the following Net Assets are considered as taxable income:

1. Offshore Assets declared in the Tax Amnesty Report which were intended to be repatriated but were not repatriated within the stipulated deadline.

In such cases, the value of the Net Assets stated in the Tax Amnesty Approval Letter will be treated as taxable income in 2016. The normal income tax rate, as well as 200% administrative sanctions, will be imposed on that income in accordance with the prevailing income tax law.

2. Onshore Assets declared in the Tax Amnesty Report which were not retained in Indonesia for 3 years following the issuance of Tax Amnesty Approval.

In such cases, the value of the Net Assets stated in the Tax Amnesty Approval Letter will be treated as taxable income in 2016. The normal income tax rate, as well as 200% administrative sanctions, will be imposed on that income in accordance with the prevailing income tax law.

3. Net Assets which were not/have not been reported in the Tax Amnesty Report, including:

- a. Net Assets declared in 2015 tax returns submitted after the Tax Amnesty Law came into effect, but are not reasonable when compared with:
 - i. Net Assets reported in 2014 tax returns or other tax returns submitted before the Tax Amnesty Law came into effect; and
 - ii. Net Assets derived from income earned or capital injection from shareholders/owners during 2015.

In such cases, the value of the Net Assets reported in 2015 tax returns should not exceed the total net assets reported in 2014 tax returns plus income during 2015 and capital paid during 2015. Any differences will be considered as taxable income.

- b. Net Assets which were not entirely/have not been reported as a result of adjustments in asset values based on Revision on Tax Amnesty Approval Letters.

Any difference between the value of Net Assets in the Revised Tax Amnesty Approval Letters and the Original Tax Amnesty Approval Letter will become the tax base. Such Net Assets will be treated as income in 2016. The normal income tax rate, as well as 200% administrative sanctions will be imposed on that income.

- 4. Net Assets not yet reported in tax returns by taxpayers who did not participate in the TAP.

If prior to 1 July 2019 the Director of General of Taxation discovers additional assets acquired by taxpayers between 1 January 1985 and 31 December 2015 that are still owned but were not fully reported in their 2015 tax returns, the value of these assets will be considered as taxable income.

Excluded from the application of this rule are individual taxpayers, such as farmers, fishermen, retirees, taxpayers who receive inheritance or grants but earn annual income below the non-taxable income, and taxpayers who live overseas for more than 183 days in any 12-month period and do not receive any income from Indonesia.

The above Net Assets will be taxed as income at the final tax rate as follows:

- 1. Corporate taxpayers: 25%
- 2. Individual taxpayers : 30%
- 3. Certain taxpayers : 12.5%

Taxpayers who qualify as "Certain Taxpayers" are:

- 1. Entrepreneurs or independent workers with an annual gross income of IDR 4.8 billion or less;
- 2. Taxpayers who earn income other than from entrepreneurship or independent work in the gross amount of IDR 632 million or less;
- 3. Taxpayers whose income is a combination of 1 and 2 above, and earn a maximum of:
 - IDR 632 million from non-business (including employment) sources; and
 - IDR 4.8 billion from business and non-business sources combined.

KPMG Note:

The issuance of PP 36/2017 was intended to provide an authority for the DGT to impose income tax on "Net Assets".

Again, taxpayers are reminded to ensure they have properly and correctly reported all their assets, including those assets which are non-income producing.

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

Partner In Charge, Tax Services

Abraham.Pierre@kpmg.co.id

Aaron Brunier

Aaron.Brunier@kpmg.co.id

Anita Priyanti

Anita.Priyanti@kpmg.co.id

Bambang Budiman

Bambang.Budiman@kpmg.co.id

Collin Goh

Collin.Goh@kpmg.co.id

Eko Prajanto

Eko.Prajanto@kpmg.co.id

Esther Kwok

Esther.Kwok@kpmg.co.id

Hamdanus Lukman

Hamdanus.Lukman@kpmg.co.id

Ichwan Sukardi

Ichwan.Sukardi@kpmg.co.id

Irwan Setiawan

Irwan.Setiawan@kpmg.co.id

Iwan Hoo

Iwan.Hoo@kpmg.co.id

Jacob Zwaan

Jacob.Zwaan@kpmg.co.id

Julya Permata Tjen

Tjen.Permata@kpmg.co.id

Natalia Yamin

Natalia.Yamin@kpmg.co.id

Steven Derek Solomon

Steven.Solomon@kpmg.co.id

Sontang Ruli Siregar

Sontang.Siregar@kpmg.co.id

Sutedjo

Sutedjo@kpmg.co.id

Tonggo Aritonang

Tonggo.Aritonang@kpmg.co.id

Yoshiyuki Misao

Yoshiyuki.Misao@kpmg.co.id

kpmg.com/id

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