

Tax News Flash

April 2019



Further Revision of Tax Holiday Regulation

To encourage direct investment in pioneer industries in Indonesia and in alignment with the provisions of Law No. 24/2018, the government has issued Minister of Finance Regulation No. 150/PMK.010/2018 ("PMK-150"), which revokes the previous regulation PMK-35, related to corporate income tax holiday. (PMK-35 was discussed in our May 2018 publication "Revised Tax Holiday Regulations More Attractive for Potential Investors.")

New Tax Holiday Rate and Timeline

In order to benefit from the tax holiday, PMK-150 lowers the minimum value to IDR 100 billion of new investment in pioneer industries, from the previous minimum of IDR 500 billion under PMK-35.

For investment value between IDR 100 billion and IDR 500 billion, a company may enjoy a 50 percent income tax reduction for the first five fiscal years, and a 25 percent income tax reduction for the following two fiscal years. The tax holiday benefit for investments of IDR 500 billion and above remains the same.

Eligible Taxpayers

The list of pioneer industries which may enjoy the tax holiday has changed under PMK-150. The changes include industries which manufacture the following:

- Irradiation, electro medical or electrotherapy equipment;
- Main components of electronics or telematics equipment;
- Machinery and main components of machinery;
- Robotics components that support the creation of manufacturing machinery;
- Main components of power plant machinery;
- Motor vehicles and main components of motor vehicles;
- Main components of vessels;
- Main components of trains;
- Main components of aircraft and activities supporting the aerospace industry.

It also introduces two new industries in the list, namely:

- Agricultural, plantation or forestry-based processing that produces pulp; and
- Digital economy, which includes data processing, hosting and related activities.

The Application Process

PMK-150 introduces a new system for processing tax holiday applications, which is the Online Single Submission ("OSS"). After the complete application is submitted via OSS, the Directorate General of Taxation, on behalf of the Ministry of Finance, will issue its decision on whether to approve or reject the request within five working days after the completed application has been received.

Transition of PMK-150

Taxpayers that have been granted the tax holiday facility based on the previous regulations can continue to enjoy the tax holiday facility until it expires.

KPMG Comments:

- By introducing a lower minimum investment value and broadening the list of pioneer industries, the government is extending its invitation to more companies to invest in Indonesia.
- It is noteworthy that under PMK-35, the list of pioneer industries included “power plant machinery, including garbage power plants”. Under PMK-150, the category has been revised to “manufacture of main components of power plant machinery”, thus making it clear that only industries that manufacture main components are qualified for the tax holiday facility.
- The OSS (www.oss.go.id) is a system which was introduced towards the end of 2018 to process establishment of companies in Indonesia. This online system is expected to provide clearer requirements and to help taxpayers apply for the tax holiday facility more efficiently.
- Although PMK-150 does not mention the 4:1 Debt to Equity Ratio requirement as per Minister of Finance regulation No. 169/PMK.010/2015 (“PMK-169”), we assume that this requirement will still apply, given that PMK-169 is not yet revoked.

Revocation of the e-Commerce Tax Regulation

At the end of March 2019, the Minister of Finance revoked regulation No. 210/PMK.010/2018 regarding tax on e-commerce transactions (which was discussed in our February 2019 Tax News Flash). This regulation was supposed to be effective from 1 April 2019 onwards. Consequently, the prevailing income tax regulations continue to apply for e-commerce transactions.

Tax Implications of Incentives in a Sale and Purchase Transaction for Reseller

The Director General of Tax has issued Circular Letter No. 24/PJ/2018 (“SE-24”) regarding tax treatment of benefits (“Incentives”) received by a buyer in connection with certain conditions in a sale and purchase transactions. The definition of a buyer in SE-24 is the party which buys a product from a seller for the purpose of reselling, including distributors, agents and retailers (“Reseller”).

This tax treatment applies whether Incentives are agreed upon in writing or agreed verbally between Sellers and Resellers, and whether provided in cash, in-kind or reduction of Reseller’s liability. The types of incentives included in SE-24 are categorized as follows:

1. Incentive provided by fulfilling certain conditions;
2. Incentive for provision of certain space and/or certain equipment; or
3. Other compensation related to the sale and purchase transaction.

A summary of SE-24 is provided in the below table:

No	Type of Incentive	Seller's Withholding Tax ("WHT") Obligation				Seller's Value Added Tax ("VAT") Obligation	
		Article 21 (if Reseller is domestic individual)	Article 23 (if Reseller is domestic company including PE)	Article 4(2) (if Reseller is domestic individual/company)	Article 26 (if Reseller is foreign entity)	In Cash/Reduction of Liability	In-Kind *)
1	Award for Certain Conditions						
a	Award or Bonus	5-30%	15%	No	20% or DTA rate	No	Yes
b	Management fee	5-30%	2%	No	20% or DTA rate	No, if service is performed overseas (the buyer is a non-resident). Yes, in other cases.	Yes
2	Provision of Certain Space or Equipment						
a	Provision of certain room/space	No	No	10%	20% or DTA rate	No, if room/space is located overseas. Yes, in other cases.	Yes
b	Provision of certain equipment	No	2% **)	No	20% or DTA rate	No, if provided overseas.	Yes
3	Other compensation***)						
a	Price Protection	No	No	No	No	No	Yes
b	Penalty for delay of delivery of goods	No	No	No	No	No	Yes
c	Expense Reimbursement, e.g. coverage of interest on loan	No	No	No	No	No	Yes

*) Incentives provided in-kind are subject to VAT. In this case, if Reseller is an overseas entity, the VAT treatment for export of goods apply, subject to compliance with VAT Regulations. If the amount cannot be determined, the Market Price applies.

**) Article 23 WHT is applicable for equipment rental for both individual and company.

***) Incentives provided as Other Compensation (point 3a, 3b and 3c) are not subject to Article 21/23 WHT, but should be considered as income in Reseller's annual income tax return. It is also not subject to Article 26 or any other type of income tax reporting if Reseller is an overseas entity.

KPMG Comments:

- SE-24 clearly states that Incentives mentioned above must not be considered as discount. Accordingly, the amount should not be included in the commercial invoice and VAT invoice to reduce the sale price.
- With the issuance of SE-24, the Indonesian Tax Authority has now clearly distinguished the tax treatment of many types of incentives. Companies which provide Incentives to their buyers (distributors, agents, etc.) should take note of this new regulation, given that there may be adverse tax implications to their business strategy because treating this incentives as discount in the commercial and/or VAT invoice would trigger tax penalties.

New Restriction on Allowable Foreign Tax Credit May Result in Higher Tax Payable in Indonesia

The Minister of Finance has issued Regulation No. 192/PMK.03/2018 ("PMK-192") regarding the implementation of tax credits on overseas income. PMK-192 is more comprehensive than the previous regulation regarding foreign tax credits ("FTC"), No. 164/KMK.03/2002 ("PMK-164"), which has now been revoked. PMK-192 is in effect as of 31 December 2018 and applicable starting from the 2018 tax year.

Maximum Allowable FTC

According to PMK-164, when calculating the maximum allowable FTC, taxpayers are required to choose the lower of:

- The actual tax paid in a certain country; or
- The portion of tax payable due to income from that country.

Now under PMK-192, there is a third limitation:

- The tax amount as per the double tax treaty ("DTT") between Indonesia and the source country, with the assumption that Indonesian tax residents are considered as non-residents and taxed at non-resident rates in the source country. If this amount is lower than the other two options, then the maximum tax credit is limited to this amount. If the DTT states that a certain type of income is only taxable in Indonesia, then no FTC is allowed.

Foreign Losses

PMK-192 clearly states that losses on foreign operations cannot be deducted when calculating taxable income, including business losses from a foreign branch or a foreign representative office.

Trust

PMK-192 includes a definition of "trust" and states that income from a trust should be reported when it is received. The source country of the income is the country where the trust is established.

If the trust is required to pay foreign tax on its income, then the trust's foreign tax return or evidence of tax paid by the trust can be utilized to claim an FTC against the Indonesian tax payable.

USD Bookkeeping

For companies that conduct their bookkeeping in USD: any FTC in a foreign currency should be converted to USD using the Bank of Indonesia middle rate, or, if unavailable, the daily spot exchange rate on the date when the FTC was payable, paid or withheld offshore.

KPMG Comments:

- PMK-192 is not applicable to FTCs on dividends paid by a controlled foreign company. In this regard, taxpayers should continue to refer to Regulation of the Minister of Finance No. 107/PMK.03/2017 (as discussed in the August 2017 edition of our Tax News Flash).
- Taxpayers who are not taxed as non-residents in their home country may be disadvantaged by the new DTT tax rate limitation (e.g. US expatriates). Given that the DTT rates for interest, dividends and royalties are between 5 percent and 20 percent while the actual foreign tax paid may be higher, they could suffer a significant FTC loss and be required to pay a higher income tax in Indonesia.
- On 9 January 2019, the Directorate General of Taxation issued a press release which states that based on PMK-192 taxpayers are no longer required to attach evidence of the FTC to their annual tax return. However, this is not expressly stated in PMK-192 and therefore taxpayers should still keep the documents in their files for substantiation purposes.



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