

Tax News Flash

July 2019



Permanent Establishment Identity Clarifications

In its ongoing effort to identify all business activities conducted by foreign entities in Indonesia, the Indonesian Tax Authority ("ITA") has provided clearer additional guidelines regarding what constitutes a Permanent Establishment ("PE") in Minister of Finance Regulation No. 35/PMK.03/2019 ("PMK-35"), which became effective 1 April 2019.

There is no change with regard to the definition of a PE under domestic laws. The time period to qualify as an Indonesian taxpayer and register for a Tax Identification Number ("TIN") or as a VATable entrepreneur also remains the same. However, PMK-35 does provide definitions for some commonly used PE terminology, such as "Place of Business", "Preparatory or Auxiliary Activities" and "Essential and Significant Activities".

In addition, PMK-35 provides the following clarifications:

A. Construction, Installation or Assembly Projects

Construction, installation and/or assembly projects in Indonesia may be deemed a PE, although performed out of the country and/or subcontracted to an onshore or offshore entity, if the project runs longer than the time test stated in the Double Tax Agreement ("DTA") between Indonesia and the related country.

Projects that may be deemed a PE include:

- **Construction consultancy services**, providing assessment, planning, design, monitoring, construction management, surveys and technical testing or analysis;
- **Construction work**, including development, operation, maintenance, demolition or redevelopment; and
- **Integrated construction work**, including design and build model or engineering, procurement and construction model.

B. Insurance Agents

An agent of an insurance company that is not established or domiciled in Indonesia will be deemed as a PE when that company receives insurance premiums from Indonesia and/or bears the risk for an insured party that is residing, domiciled or present in Indonesia.

The does not apply for reinsurance.

C. Time Test

In accordance with the Income Tax Law, any service performed by an individual in Indonesia on behalf of a foreign entity longer than 60 days within any 12-month period may be deemed a PE, unless stated otherwise in the applicable DTA.

PMK-35 also clearly states that in determining the number of days, part of a day is considered as one day. If the period is calculated in months, part of a month is considered as one month.

KPMG Comment:

- A PE may find it difficult to apply for a TIN, given that it does not have all the required necessary formal local documents, such as a Deed of Establishment or a Domicile Letter. It is unclear whether PMK-35 will result in an easier TIN registration process for a PE.
- For construction projects expected to exceed the applicable DTA time test, it is important to consult with your tax advisors to maximize the tax efficiency of the project's structure.

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