Elimination of Cumbersome Procedures for Employing Foreigners

Within 3 months after Manpower Regulation No. 16 Year 2015 (Regulation 16) was issued, the Minister of Manpower decided to revoke the latest requirements for non-resident Directors and Commissioners to obtain IMTAs and for temporary IMTAs for certain other activities. In October 2015, the Minister of Manpower issued Regulation No. 35 Year 2015 (Regulation 35) regarding Amendment of Regulation 16, on the procedures and requirements for domestic companies employing foreign employees.

Below are the highlights of Regulation 16's amended items:

Topic	Initial Regulation 16/2015	Amended Regulation 35/2015
1. Ratio between national and foreign employees	An employer or a sponsoring company has to employ 10 Indonesian counterparts in order to employ one expatriate employee – with special exceptions.	Deleted.
2. PMDN Commissioners	None.	A Domestic Investment Company (PMDN) is not allowed to have foreign Commissioners.
3. Work permits (IMTAs) for non-resident Directors and Commissioners	A foreign member of the Board of Directors and Commissioners, a patron, a manager or a supervisor domiciled overseas is required to obtain an IMTA.	A foreign member of the Board of Directors and Commissioners, a patron, a manager or a supervisor domiciled overseas is not required to obtain an IMTA.
4. Temporary IMTAs	A temporary work permit is required for eight types of activities: a. Providing guidance, counseling and/or training in the application and innovation of industrial technology to improve the quality and design of industrial products, as well as cooperation of overseas marketing for Indonesia; b. Producing commercial films which have obtained permission from the competent authority; c. Providing lectures;	A temporary work permit is required for only three types of activities, which are: a. Producing commercial films with permission from the competent authority; b. Conducting an audit, production quality control and/or inspection at a company branch in Indonesia for more than one month; c. Work in relation to machine installation, electrical systems, after sales services and/or products on business trials.

Topic	Initial Regulation 16/2015	Amended Regulation 35/2015
4. Temporary IMTAs	d. Attending meetings with the Head Office or representative in Indonesia; e. Conducting an audit, production quality control and/or inspection at a company branch in Indonesia; f. Undergoing work-ability testing; g. A onetime job; h. Work in relation to the installation of machinery, electrical systems, after sales services and/or products on business trials.	
5. Compensation fund for foreign worker utilization (DKP-TKA)	The DKP-TKA is in the amount of USD 100 and has to be paid in advance in IDR.	The DKP-TKA is in the amount of USD 100 and has to be paid in advance. Conversion to IDR is not necessary. Any DKP-TKA already paid to obtain an IMTA for non-resident Directors and Commissioners and Temporary IMTAs cannot be refunded.
6. Transfer of knowledge	None	Indonesian manpower counter-parting for the purpose of transferring technical and skills knowledge will be further stipulated in a decree of the Director General for Development of Placement of Workers and Expansion of Job Opportunities.

KPMG Comments

- Following extensive lobbying and criticism from the business community, a much more business-friendly Manpower Regulation 35 has been issued, revising some of the cumbersome and conflicting procedures under Regulation 16 issued 3 months earlier.
- The new Regulation responds to some the criticisms regarding work permit requirements for non-resident Directors and Commissioners.
- Without the requirement to have an IMTA, non-resident Directors and Commissioners can establish a valid position as non-residents for Indonesian tax purposes.
- Despite having the 10:1 ratio no longer applicable, it is unclear whether the Ministry of Manpower will use other ratios similar to those used before Regulation 16 was issued.
- The Ministry of Manpower has indicated that a Foreign Investment Company is allowed to employ a foreign employee provided that the foreign employee has at least 5 years' experience and competency for the job (a Competency Certificate is needed) rather than a formal university degree.
- Between 2012 and 2014, there was a 5.5% decrease in the number of expatriate employees working in Indonesia. It is yet to seen if this 'deregulation" of the bureaucratic process, including scrapping the requirement to master the Bahasa Indonesia language, will help encourage more foreign investments, one of the reform policies of President Jokowi.

The End of Bank Secrecy Laws? – Procedures for Exchange of Tax Related Information With Other Countries

To further strengthen Indonesia's commitment to participate in the multilateral Exchange of Information, the Finance Minister issued Regulation No. 60/PMK.03/2014, as amended by Regulation No. 125/PMK.010/2015, regarding procedures for the exchange of information with other countries. The purpose of the Exchange of Information is to exchange data and information needed to verify compliance in fulfilling tax liabilities, including information held by financial institutions, other individuals and/or entities on taxation matters in both nations.

Some important points in the Regulation are as follows:

1. The exchange of information includes:
   - Exchange of information based on specific request;
   - Spontaneous exchange of information; as well as
   - Automatic exchange of information (AEOI)
2. A specific request for information from the Directorate General of Taxation (DGT) can be made if there is an allegation that a taxpayer made and/or has been making transactions to avoid taxes, evade taxes or merely benefit from a P3B facility. Such a request can be made after the DGT has made an unsuccessful effort to obtain the desired information domestically.
3. Supported by the G20 leaders, the AEOI standard developed by the Organization for Economic Corporation and Development (OECD) aims to help identify cross-border tax evasion. This initiative entails the systematic transmission of investment information by the tax authority of account holders in its country to the residents' tax authority on an annual basis
4. The DGT can thus obtain information from taxpayers and/or other parties, such as:
   - Individuals (local national and expatriates domiciled in Indonesia)
   - Entities in Indonesia
   - Entities outside Indonesia
   - Permanent Establishments
   - Customers of financial institutions in Indonesia
   - Financial institutions, public accountants, notaries, tax consultants, administration offices, other government entities, institutions, associations, etc; and/or
   - Other parties domiciled in Indonesia
5. "Financial institutions" refers to banks, securities companies, insurance companies, pension funds, leasing companies, etc.

KPMG Comments

- Indonesia has agreed to early AEOI implementation in September 2017, rather than in September 2018. One would expect DGT to establish a robust framework to protect taxpayers' confidentiality.
- Even though it is not new that DGT can access taxpayers' financial information from their banks, this Regulation specifically and substantially broadens DGT's ability to obtain information from other sources.
- It is mandatory for taxpayers and/ or other parties to provide requested information in relation to tax matters. There are legal sanctions for uncooperative taxpayers and/or other parties.
- In December 2014, Singapore and Indonesia agreed to extend the mechanism of information exchange by request until the implementation of AEOI, but no later than 2018. Once established, both countries will automatically share financial information of its account holders with the residents country's tax authority.

Reference:

1. Manpower Regulation No 35 Year 2015
2. Manpower Regulation No 16 Year 2015
3. Regulation of the Finance Minister No. 60/PMK.03/2014
4. Regulation of the Finance Minister No. 125/PMK.010/2015
5. The Jakarta Globe 25 Aug 2015 and 26 Oct 2015
6. Automatic Exchange of Information – The Common Reporting Standard. KPMG International.
7. www.OECD.org.tax
8. www.reuters.com Dec 2014

Contact us

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

Esther Kwok
Head of Global Mobility Services (GMS)
E: Esther.Kwok@kpmg.co.id

kpmg.com/id