



Indonesia Tax Info

Update on Regulation pertaining to Debt to Equity Ratio

The Indonesia Directorate General of Taxes (“DGT”) has issued DGT Regulation number 25/PJ/2017 (“PER-25”) as the implementing regulation of Minister of Finance (“MoF”) Regulation number 169/PMK.010/2015 (“PMK-169”) concerning debt to equity ratio (“DER”).

The salient points of PER-25, which are consistent with PMK-169, are among others:

1. PER-25 reaffirms the treatment of financing cost derived from related-party loans. Related-party loans should fulfil the arm’s length requirement, and also meet the DER threshold of maximum 4:1. If the interest of a related-party loan fails to fulfil the arm’s length requirement, the financing cost, e.g. interest, would be considered as a deemed dividend, and would be subject to the prevailing withholding tax.
2. Under PMK-169, the loan-related costs below cannot be claimed as deductible expense:
 - Loan-related cost which is connected to debt which exceeds the DER threshold
 - Borrowing cost of loan whose authenticity cannot be formally confirmed
 - Cost arising from a related-party loan if it fails to meet the arm’s length principle
 - Loan-related cost which is used to generate non-taxable income or income subject to final tax.However, PER-25 stipulates an additional point whereby in the event the above loan/ borrowing costs are capitalized as part of an asset’s acquisition cost, the depreciation expense of such assets is not deductible for tax purposes.

In this issue:

1. [Update on Regulation pertaining to Debt to Equity Ratio](#)
2. [Update on Tax Regulations on Land and/or Building Rental](#)
3. [Procedures for Examination of Final Income Tax Payment on the Transfer of Land and/or Building Rights](#)
4. [New Administrative Requirements and Procedure for Submission of Tax Appeal Letter and Tax Lawsuit Letter](#)
5. [Updates on New Taxpayer Registration Rules](#)

3. Additionally, PER-25 provides the prescribed forms to report the following items which serve as attachments to the Corporate Income Tax Return:

- DER calculation; and
- A summary of overseas loans.

The forms should be submitted starting from the 2017 Corporate Income Tax Return; otherwise, the related borrowing cost may be treated by the tax office as non-deductible.

PER-25 is effective as of 28 November 2017.

Update on Tax Regulations on Land and/or Building Rental

The Government has issued Regulation number 34 Year 2017 ("PP-34") regarding the income tax on income received from land and/or building rental. PP-34 provides legal certainty for the payment of Income Tax on income received from land and/or building rental including income from the implementation of Build Operate Transfer ("BOT") agreements, while the income tax rate remains at 10% of the gross land/building rental value.

The key changes in PP-34 are set out below:

1. Definition of Building

PP-34 defines 'building' as a technical construction that is permanently affixed or attached on land and/or waters.

2. Build Operate Transfer (BOT)

Pursuant to PP-34, income received by landlords from investors in relation to BOT agreements is subject to final income tax and such income includes:

- a. income from periodic payments during the term of the BOT agreement;
- b. income in the form of building which is transferred prior to the expiry of the BOT agreement;
- c. income in the form of building which is transferred at the time the BOT agreement is ended; and/or
- d. other income related to the BOT agreement, including payments related to revenue sharing from the use of the building and penalty on the BOT agreement.

3. Tax Object

The elucidation of PP-34 stipulates that income received from telecommunication tower (e.g., Base Transceiver Station) and tank rental is subject to final income tax.

4. Tax Base

The tax base of the land and/ or building rental is all amounts paid or payable by the lessee in any name and form which is connected to such land and/or building rental, including costs of maintenance and upkeep, security fees, service fees, and other facility costs, regardless whether the agreements are made separately or not.

5. Withholding Agent

Income tax on income received or acquired from a Lessee which is appointed as a tax withholding agent will be withheld by the Lessee. However, if the Lessee is not a tax withholding agent, the income tax payable must be paid directly by the individual or entity receiving or acquiring the income. The definition of tax withholding agent includes the following:

1. Government agency;
2. Domestic Corporate Taxpayer;
3. Activities Organizer;
4. Permanent Establishment;
5. Joint Operation;

6. Other representative of a foreign company;
7. Domestic Individual taxpayer appointed by the Director General of Taxes, Ministry of Finance.

PP-34 is effectively in force in 2 January 2018 and amends Government Regulation number 29 of 1996 as most recently amended through Government Regulation number 5 of 2005.

Procedures for Examination of Final Income Tax Payment on the Transfer of Land and/or Building Rights

The DGT has issued a new Regulation number PER-18/PJ/2017 ("PER-18") and related Circular number SE-40/PJ/2017 to govern the procedures for the examination of final income tax payment on the transfer of land and/or building rights as well as land and/or building Sale and Purchase Binding Agreements ("*Perjanjian Pengikatan Jual Beli*"/ "PPJB").

A Taxpayer that transfers land/ building rights or enters into a PPJB is required to apply to the tax office for examination of the final income tax paid for the aforesaid transaction. This application should be submitted to the tax office along with the required supporting documents. If all the requirements have been met, the tax office will issue an approval letter within three days since the application letter was submitted. This letter is required by the notary as the prerequisite to sign the transfer deed.

PER-18 also allows the tax office to perform material verification after the transaction occurs through the following actions:

- Verify actual location and size of the land and/or building;
- Verify the transaction value as per the final tax payment slips in the case of a transaction between independent parties; and
- Verify that the transaction value is in line with the arm's length principle in the case of a transaction between related parties.

The initial procedure for material verification involves preparing a transfer value fairness analysis report which states whether there is an indication of an unfair transfer value or not. The indication of an unfair transfer value includes the following:

- a) existence of a related party relationship;
- b) the transfer value is less than the land and/or building tax object ("*Nilai Jual Objek Pajak*" or "NJOP") stated in the latest land and/or building tax assessment letter ("SPPT");
- c) the transfer value is less than the value listed in the brochure/ leaflet/ price list;
- d) discrepancy of the information on location and/or area of the land and/or building which is transferred, between those stated in the ownership certificate for land area, and/or Building Permit ("*Izin Mendirikan Bangunan*" or "IMB") for the building; and/ or
- e) the transfer value is less than the indicated market value obtained by the DGT based on information received from internal/ external parties.

If, based on the verification, the tax office determines a tax underpayment, they may collect such tax underpayment. If the taxpayer disagrees with such assessment, the tax office may follow this up in a tax audit process.

PER-18 also governs the procedure for transfer of land and/or buildings in real estate collective investment contract schemes (please refer to MoF Regulation Number 37/PMK.03/2017 covered in our Tax Info June 2017 Edition).

PER-18 revokes DGT Regulation No. 26/PJ/2010 and is effectively in force since 2 November 2017.

New Administrative Requirements and Procedure for Submission of Tax Appeal Letter and Tax Lawsuit Letter

The Tax Court has issued circular letter number SE-08/PP/2017 ("SE-08") dated 7 November regarding administrative requirement for tax appeal and tax lawsuit submission procedures. SE-08 amends the previous circular letter, i.e., SE-002/PP/2015 ("SE-002").

The amendment contains more detailed requirements and procedures in relation to the tax appeal and lawsuit filing processes. Among others, some of the salient changes in SE-08 are as follows:

- Additional required documentation to be submitted along with a tax appeal or a tax lawsuit letter, such as tax assessment notice, tax objection letter and tax payment slip;
- Requirement to also provide a Microsoft Word and PDF file for the tax appeal letter, tax lawsuit letter, rebuttal letter and all additional required documents;
- Sample templates of tax appeal letter, customs appeal letter, and tax lawsuit letter containing the minimum information required to be stated in a tax appeal or a lawsuit letter;
- Tax appeal letter, tax lawsuit letter, or rebuttal letter should be printed on F4 size paper, using Bookman Old Style font, size 11.

In addition, the submission of a tax appeal letter, tax lawsuit letter, rebuttal letter, and tax appeal withdrawal letter can only be done through:

- Direct submission to the tax court using a normal mailing process; or
- Registered mailing services or courier services.

Taxpayers can no longer submit these documents through fax.

SE-002 is effective as of 7 November 2017.

Updates on New Taxpayer Registration Rules

The Minister of Finance ("MoF") has updated its guideline on registration and deregistration of Tax ID Number (NPWP) and VAT Registration Number (NPPKP) through issuance of Regulation number 147/PMK.03/2017 ("PMK-147") which amends the previously issued regulation, MoF Regulation number PMK-182/PMK.03/2015.

Due to the increasing use of virtual offices by taxpayers as a place of domicile to conduct their business, PMK-147 has expressly acknowledged virtual office or co-working office as the registration place of a VAT-able enterprise as long as the virtual office provider meets the following criteria:

1. The virtual office provider is a VAT registered entrepreneur ("PKP") itself,
2. The virtual office provider supplies physical rooms to the entrepreneur that wishes to be registered as PKP,
3. The virtual office provider evidently supplies support office services activities, and
4. The entrepreneur as the user of such virtual office service must have an appropriate business license or similar documents issued by the government or other authorized institutions.

Virtual office is generally defined in PMK-147 as an office which has physical rooms and equipped by ancillary office services provided by a virtual office provider, which may serve as a place of domicile, a place for doing business activity or business correspondences which is jointly used by two or more other entrepreneurs in which the entrepreneurs have to pay other than office lease fee.

PMK 147 is effective as of 1 November 2017.

Contact Persons

Questions concerning any of the subjects or issues contained in this newsletter should be directed to your usual contact in our firm, or any of the following Tax Partners:

Melisa Himawan Tax Managing Partner	Business Tax and Corporate License	mehimawan@deloitte.com
Balim	Transfer Pricing	bbalim@deloitte.com
Cindy Sukiman	Business Tax	csukiman@deloitte.com
Dionisius Damijanto	Business Tax	ddamijanto@deloitte.com
Heru Supriyanto	Business Tax	hsupriyanto@deloitte.com
Irene Atmawijaya	Global Employer Services and Business Process Solutions	iatmawijaya@deloitte.com
John Lauwrenz	Business Tax	jlauwrenz@deloitte.com
Roy David Kiantiong	Transfer Pricing	rkiantiong@deloitte.com
Roy Sidharta Tedja	Business Tax and Business Process Solutions	roytedja@deloitte.com
Turmanto	Business Tax, Indirect Tax and Custom & Global Trade	tturmanto@deloitte.com
Yan Hardyana	Business Tax	yhardyana@deloitte.com

Deloitte Touche Solutions

The Plaza Office Tower, 32nd Floor
Jl. M.H. Thamrin Kav 28-30
Jakarta 10350, Indonesia
Tel: +62 21 2992 3100
Fax: +62 21 2992 8303
Email: iddttl@deloitte.com
www.deloitte.com/id

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/id/about to learn more about our global network of member firms.