

Indonesia Tax Info February 2021

Update on tax reliefs related to COVID-19 pandemic

In early 2020, to support Indonesian businesses and individuals affected by the COVID-19 pandemic, Minister of Finance (MoF) provided tax reliefs through the issuance of Regulation Number 23/PMK.03/2020 (PMK-23). PMK-23 was updated several times with regulations 44/PMK.03/2020, 86/PMK.03/2020, and PMK-110/PMK.03/2020 (previous MoF regulations) (please refer to [Tax Alert March 2020 – 2nd edition](#), [Tax Alert April 2020 – 2nd edition](#), [Tax Info July 2020](#), and [Tax Info August 2020](#)). The tax reliefs provided were:

- Article 21 employee income tax (EIT) to be borne by the government for employees of certain employers, where the annualized fixed and regular gross employment income for the month is not more than IDR 200 million;
- 0.5% final tax for small and medium enterprises (SMEs) to be borne by the government;
- Article 4(2) income tax on certain construction activities to be borne by the government;
- Exemption from Article 22 income tax on imports for eligible taxpayers;
- 50% reduction in Article 25 income tax (monthly tax installments) for eligible taxpayers; and

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- Preliminary refund of Value Added Tax (VAT) overpayments for eligible VAT-able entrepreneurs (PKP), where the overpayment shown on the VAT return does not exceed IDR 5 billion.

The previous MoF regulations expired on 31 December 2020. Since the pandemic has not subsided and the Government views that providing such tax reliefs are still necessary, the MoF issued Regulation Number 9/PMK.03/2021 (PMK-9) on 1 February 2021 to reintroduce these tax reliefs. PMK-9 came into effect from 2 February 2021 and it provides for the tax reliefs to apply from fiscal period January through June 2021.

The content of PMK-9 is broadly similar to the previous MoF regulations with a number of updates:

- Taxpayers must have already submitted the annual income tax return for fiscal year 2019 before applying for the tax reliefs under PMK-9. An exception applies for taxpayers that are not required to submit this return;
- The reliefs on Article 22 income tax can be utilized from the date the tax exemption letter is issued through 30 June 2021;
- Taxpayers that have benefitted from the reliefs under previous MoF regulations must renotify/reapply to the tax office if they wish to utilize the reliefs under PMK-9;
- Under the previous MoF regulations, the tax office would issue notification letters only when the applicants did not qualify for the reliefs for which they applied/renotify. Under PMK-9, the tax office must issue notification letters to taxpayers confirming their eligibility for the reliefs, either qualifying or not qualifying. This provides more certainty to taxpayers;
- The number of business classifications (*Klasifikasi Lapangan Usaha* (KLU)) eligible for the reliefs are updated as follows: 1,189 KLUs for EIT, 730 KLUs for Article 22 income tax, 1,018 KLUs for monthly tax installments, and 725 KLUs for VAT;
- PMK-9 allows taxpayers that utilize reliefs under previous MoF regulations to submit realization reports for the fiscal year 2020 by 28 February 2021. Otherwise, the tax reliefs will become invalid for that period and the unpaid tax must be paid;
- The relief utilization report for EIT, final tax for SMEs, and Article 4(2) income tax on certain construction activities must be submitted to the tax office by the 20th of the following month. Failure to comply will mean that the relief cannot be utilized for that fiscal period and the unpaid tax must be settled. Utilization reports may be amended at the latest by the end of the month following the initial deadline for the realization report;
- PMK-9 provides the following transitional provisions for taxpayers that have utilized the relief for monthly tax installments under PMK-86 or PMK-110:
 - The monthly tax installment (after taking account of the-relief) of the last period of fiscal year 2020 applies until the taxpayer submits the annual income tax return for fiscal year 2020 (2020 annual ITR); and
 - The relief for the monthly tax installments for the subsequent months (calculated from the amount stated in the 2020 annual ITR) applies from:
 - The month when the 2020 annual ITR is submitted if the notification is submitted before or together with the 2020 annual ITR; or
 - The fiscal period when the notification is submitted if the notification is submitted after 2020 annual ITR; and
- Taxpayers may start utilizing the reliefs for EIT and monthly tax installments as from January 2021 where the notification to utilize the relief is submitted by 15 February 2021.

PMK-9 was issued to reintroduce COVID-19 related tax reliefs that have expired in December 2020.

The reliefs under PMK-9 apply from the fiscal period January through June 2021.

Implementing regulation on tax facilities in Special Economic Zones issued

On 20 February 2020, the Indonesian government issued Regulation Number 12 of 2020 (PP-12) to replace Regulation Number 96 of 2015 (PP-96) regarding the tax facilities available in special economic zones (SEZ) (please refer to [Tax Info March 2020](#)). The detailed arrangements for the facilities were to be specified in an implementing regulation to be issued by MoF. Subsequently, the MoF issued the implementing regulation on 30 December 2020 through Regulation Number 237/PMK.010/2020 (PMK-237). PMK-237 came into effect on 29 January 2021 and replaces MoF Regulation Number 104/PMK.010/2016 (PMK-104).

PMK-237 provides detailed provisions on various tax facilities available in SEZs.

This article outlines the salient key tax-related features of PMK-237.

General

Taxpayers in an SEZ can be classified as either a:

- Business entity (*badan usaha*): A legal entity that manages an SEZ; or
- Business player (*pelaku usaha*): An enterprise that carries out business in an SEZ.

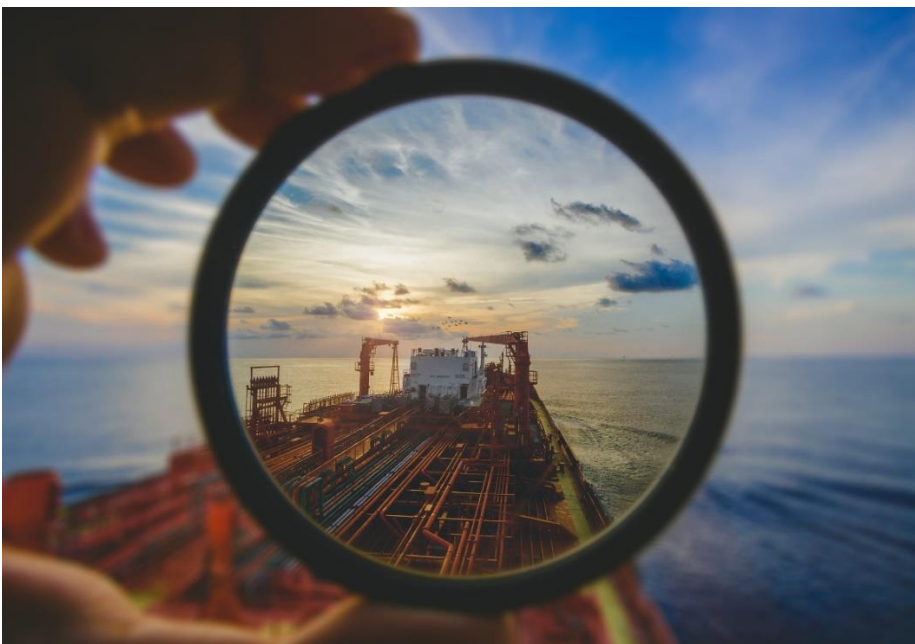
PMK-237 provides income tax, VAT, import tax and import duty, and excise tax facilities to business entities and business players in an SEZ.

To be eligible for the facilities under PMK-237 a business entity must meet the following criteria:

- Be a domestic taxpayer that conducts business in an SEZ, including a branch;
- Be registered as business entity;
- Have clear boundaries following the stage of SEZ development; and
- Hold the necessary license to conduct its business/activities.

While a business player must:

- Be a domestic taxpayer that conducts business in an SEZ, including a branch; and
- Hold the necessary license to conduct its business/activities.



Income tax

Under PP-12, both business entities and business players may choose to apply for either a tax holiday or a tax allowance provided that they fulfil the criteria for the selected income tax facility. However, under PMK-237, the tax allowances option is not available to a business entity.

The following table sets out the income tax facilities for business entities and business players, and the corresponding additional criteria that must be met, respectively:

Items	Business entity	Business player	
	Tax holiday	Tax holiday	Tax allowance
Facility	<ul style="list-style-type: none"> Corporate income tax (CIT) rate reduction of 100% for ten years for a minimum investment of IDR 100 billion; Income eligible for the relief includes: <ul style="list-style-type: none"> Income from the sale of land and/or buildings; Rental income from land and/or buildings; and Income from “main business activities,” excluding the sale or rental of land and/or buildings (“main business activities” refer to business activities and the type of production that are mentioned in the business license); CIT reduction of 50% for two years following the end of the ten-year tax holiday period; Eligible income is not subject to withholding tax (WHT) for a business entity that carries out an SEZ “main activity” (an SEZ “main activity” refers to the business activity and associated chain of production that is the main focus of the SEZ). 	<ul style="list-style-type: none"> CIT rate reduction of 100% for a period depending on the amount of the investment: <ul style="list-style-type: none"> Ten years for an investment of at least IDR 100 billion but less than IDR 500 billion; Fifteen years for an investment of at least IDR 500 billion but less than IDR 1 trillion; and Twenty years for investments of IDR 1 trillion and above; CIT reduction of 50% for two years following the end of the tax holiday period; Eligible income is not subject to WHT for a business player that carries out an SEZ main activity. 	<ul style="list-style-type: none"> An investment allowance in the form of a reduction of net income equivalent to 30% of the cost of tangible fixed assets including land; Accelerated depreciation and amortization; A maximum 10% WHT rate on dividends paid to foreign shareholders; An extension of the tax loss carryforward period to ten years (normally five years); Available to business players that carry out either an SEZ main activity or a non SEZ main activity.

Items	Business entity	Business player	
	Tax holiday	Tax holiday	Tax allowance
Qualifying criteria	<ul style="list-style-type: none"> • A domestic taxpayer conducting an SEZ main activity with a minimum investment of IDR 100 billion; • Incorporated in Indonesia; • Making an investment in respect of which the MoF has not issued a decision on granting or rejecting a tax holiday or tax allowance facility; • Committed to realizing the planned investment of at least IDR 100 billion within four years after the commencement of commercial production. 	<ul style="list-style-type: none"> • A domestic taxpayer conducting an SEZ main activity with a minimum investment of IDR 100 billion; • Incorporated in Indonesia; • Making an investment in respect of which the MoF has not issued a decision on granting or rejecting the following income tax facilities: <ul style="list-style-type: none"> – Tax holiday or tax allowance facilities under an SEZ arrangement or a regular business arrangement; – Income tax facility provided for companies on industrial estates; or – Super deduction facility for labor intensive industries; • For the SEZs located in Banten, Central Java, East Java, Jakarta, West Jakarta, and Yogyakarta provinces, the planned investment must be realized within five years after the issuance of the decision granting the tax holiday facility. 	<ul style="list-style-type: none"> • A domestic taxpayer in an SEZ who conducts either an SEZ main activity or a non SEZ main activity; • Incorporated in Indonesia; • Making an investment in respect of which the MoF has not issued a decision on granting or rejecting the following income tax facilities: <ul style="list-style-type: none"> – Tax holiday or tax allowance facilities under an SEZ arrangement or a regular business arrangement; – Income tax facilities provided for companies on industrial estates; or – Super deduction facility for labor intensive industries.

To apply for the tax holiday or tax allowance facilities under PMK-104, taxpayers must follow the prescribed procedures. PMK-237 has streamlined and simplified the application process. Key features of the application procedure include:

- The taxpayer self-verifies using the Online Submission System (OSS) whether it is eligible for the facilities; if eligible, the taxpayer may proceed with the application by submitting the required documentation.
- The application is passed via the OSS to the relevant ministry and the taxpayer will be informed that the application is being processed.
- The application must be submitted before entering commercial production either:
 - Together with the application for a business identification number (*Nomor Induk Berusaha* (NIB)) (for a new business entity/business player); or
 - At the latest one year after the business license for the SEZ is issued by the OSS.
- Where the OSS is not available, applications may be submitted manually through the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* (BKPM)).
- The BKPM will issue the decision letter to grant or reject the tax facility on behalf of the MoF within five working days after submission of a completed application.

In line with PP-12, PMK-237 does not require a taxpayer to be a “new” taxpayer to qualify for the facility. It also abolishes the requirement to deposit at least 10% of the total investment amount in an Indonesian bank that was required under PMK-104.

A taxpayer that has successfully applied for a tax holiday facility may benefit from the relief from the fiscal year in which the taxpayer commences commercial production.

A taxpayer that has been granted the tax allowance facility may start utilizing the facility as follows:

Type of facility	Commencement date
<i>Investment allowance</i>	Fiscal year in which the taxpayer commences commercial production.
<i>Accelerated depreciation and amortization</i>	Month of issuance of the tax allowance decision letter.
<i>Maximum 10% dividend WHT rate</i>	Month of issuance of the tax allowance decision letter (the benefit ceases to apply when the business player no longer meets the qualifying criteria).
<i>Tax loss carry forward of ten years</i>	Fiscal year of issuance of the tax allowance decision letter. The tax losses cannot be carried forward beyond the end of the investment allowance utilization period.

To determine the start of commercial production, the tax authority will carry out a field audit. The audit will be conducted within 45 working days after the audit notification is sent, following the taxpayer’s request to the tax authority to determine the start of commercial production, and will review:

- Fulfilment of requirements when the application for the facility is made;
- Commencement of commercial production;
- Documentation submitted during the application;
- Fulfilment of the eligibility criteria for the facility;
- Realized versus planned investment; and
- The value of the investment. If the actual amount invested is different from the planned amount, the tax holiday period may be adjusted.

After the taxpayer obtains the tax benefit, it must submit the appropriate annual report(s) to the Directorate General of Taxes in the prescribed format by 30 January of the following fiscal year, as shown in table below:

Type of taxpayer	Report	Report submission
<i>Business entity</i>	Investment realization report	Report is required from the fiscal year in which the business entity commences commercial production through the end of the ten-year tax holiday period.
<i>Business player</i>	Investment realization report	Report is required from when the tax facility is granted until the business player commences commercial production.
	Production realization report	Report is required from the fiscal year in which the business player commences commercial production through the end of the tax holiday/tax allowance utilization period.

There are restrictions on the purchase or utilization of capital goods that fulfil the agreed investment plan that is granted with the tax holiday or tax allowance. With some exceptions, the purchase or import of secondhand capital goods, or the transfer of capital goods during the facility period is not permitted. Capital goods may be replaced by following certain procedures as set out in PMK-237. The replacement of fixed assets may affect the income tax reliefs granted, e.g., the tax holiday period may be adjusted or the new fixed assets may not utilize accelerated depreciation. A serious breach of the restrictions or other requirements under PMK-237 may cause the approval to be revoked, which requires all benefits obtained to date to be repaid, together with the payment of tax penalties. The taxpayer also will be barred from obtaining an income tax facility in the SEZ in the future.

VAT

Business entities and business players in an SEZ that are also entrepreneurs registered for VAT (*Pengusaha Kena Pajak*), must charge VAT and issue VAT invoices on the delivery of taxable goods and/or taxable services.

PMK-237 provides for a “VAT not collected” facility very similar to that in PP-12. Where the taxable goods eligible for the VAT not collected facility on purchase or import are being delivered outside the SEZ, the VAT subject to the facility must be repaid, unless the capital goods are (i) used directly for at least two years for the production of taxable goods and/or taxable services during the course of the SEZ development, and (ii) were imported not less than four years earlier. PMK-237 provides a detailed administrative procedure related to the application for the facility as well as the settlement of VAT when the taxable goods and/or taxable services are transferred outside an SEZ.

VAT collected and accounted for that should have been subjected to the VAT not collected facility as from 24 April 2020 through 29 January 2021 (when PMK-237 became effective), may be refunded under certain conditions.

Import taxes

A business entity may enjoy an exemption from import duties and benefit from import taxes not collected facilities for five years starting from the effective date of import taxes and duty exemption letter. If the period of SEZ development is extended, the import taxes and duty facilities may be extended in line with the updated SEZ development deadline. If the deadline expires before the importation has been fully realized, the facilities may be extended for a further year.

A business player may enjoy import duty exemption and import taxes not collected facilities for a maximum of five years from the start of the industry’s development or expansion. If the deadline expires before the importation has been fully realized, the facilities may be extended for a further year.

Facilities for tourism SEZ

Under PMK-237, certain facilities specific to SEZs in the tourism industry are available, in the following circumstances:

- The purchase of houses is exempt from luxury goods sales tax and income tax on sales of very luxury-goods where this becomes the main business activity in a tourism SEZ;
- Stores in the SEZ may participate in the VAT refund scheme for foreign passport holders; and
- The importation of capital goods and materials for certain activities is eligible for import duty and excise facilities.

Transitional provisions

Existing business entities and business players may apply for the facilities available under PMK-237 as follows:

Situation	Translation provision
<i>Business entity or business player has obtained facility under PP-96</i>	The facility continues to apply until the utilization period is finished.
<i>Recommendation for granting facility based on PP-96 has been submitted by the BKPM to the relevant ministry before PP-12 became effective (i.e., 24 February 2020)</i>	The application may be processed under PMK-237 provided all the supporting documentation required for the application is submitted.
<i>Business entity is established before 24 February 2020</i>	An application for a tax holiday facility under PMK-237 may be made if: <ul style="list-style-type: none"> • The criteria for the tax holiday facility are met; and • The application is made: <ul style="list-style-type: none"> – Within six months after PMK-237 becomes effective. (If the entity commences commercial production within 60 days after PMK-237 becomes effective (i.e., by 30 March 2021), the requirement to apply for the facility before commercial production commences is waived); and – All the supporting documentation required for the application is submitted.
<i>Business entity is established as from 24 February 2020 through 30 March 2021)</i>	An application for a tax holiday facility under PMK-237 may be made if: <ul style="list-style-type: none"> • The criteria for the tax holiday facility are met; and • The application is made: <ul style="list-style-type: none"> – Within one year after the relevant license is issued. (If the entity commences commercial production by 30 March 2021, the requirement to apply for the facility before commercial production commences is waived); and – All the supporting documentation required for the application is submitted.
<i>Business player whose principal license, investment license, investment registration, or business license is issued before 24 February 2020</i>	An application for a tax facility under PMK-237 may be made if: <ul style="list-style-type: none"> • Commercial production has not commenced; • No other income tax facilities have been granted in respect of the investment; • The relevant qualifying criteria are met; and • The application is made: <ul style="list-style-type: none"> – Within six months after PMK-237 becomes effective; – Before the player commences commercial production; and – All the supporting documentation required for the application is submitted.

Situation	Translation provision
<p><i>Business player whose business license is issued from 24 February 2020 through 30 March 2021</i></p>	<p>An application for a tax facility under PMK-237 may be made if:</p> <ul style="list-style-type: none"> • No other income tax facilities have been granted in respect of the investment; • The relevant qualifying criteria are met; • The application is made: <ul style="list-style-type: none"> – Within one year after the relevant license is issued; – Before commercial production commences; and – All the supporting documentation required for the application is submitted.

Closing remarks

PMK-237 has been long awaited by both existing business entities and business players in SEZs. The timeline for applying for the tax facility under PMK-237 is tight and taxpayers in SEZs who wish to apply for the facility should review the regulation thoroughly and plan appropriate action immediately.



Customs Focus

New import regulation on used lithium battery to support electric motor vehicle industry

The Ministry of Trade has issued Regulation Number 100 Year 2020 (Permendag-100) on 21 December 2020 to introduce new regulation on importation of used lithium batteries, in its effort to expedite the development of the battery-based electric motor vehicle industry. Permendag-100 specifically aim to provide business certainty and improve the Directorate General of Customs and Excises (DGCE)'s services to expedite the issuance of business license services for the battery-based electric motor vehicle industry.

Permendag-100 was issued to expedite the development of the battery-based electric motor vehicle industry.

The salient points of Permendag-100 are as follows:

Provisions for imports of Used Lithium Battery

Used lithium batteries may only be imported under the following conditions:

- By companies that have NIB with valid Import-Producer Identification Number (*Angka Pengenal Impor Produsen (API-P)*); and
- As raw material for the lithium battery industry to support the growth of the battery-based electric motor vehicle industry.

In order to import used lithium battery, companies with API-P must first obtain Producer-Importer-Used Lithium Batteries license (IP-Used Lithium Battery) from the DGCE. The IP-Used Lithium Battery license will be required as mandatory supporting document during customs clearance. To obtain an IP-Used Lithium Battery license, a company is required to submit an application electronically to DGCE through <http://inatrade.kemendag.go.id> or visit the DGCE's office. DGCE will issue the IP-Used Lithium Battery license by electronic signature no later than five working days after the requirements are fulfilled. IP-Used Lithium Battery license is valid insofar the company runs its industrial business activities.

Importation procedure of used lithium battery

Prior to importation of used lithium batteries, companies with API-P are required to undergo verification or technical inspection by surveyor appointed by the minister in the loading country to examine the followings:

- Whether the importer's identity is clear and correct;
- Number and date of the IP-Used Lithium Battery;
- Type of used lithium batteries, together with the description, volume, and Tariff Post/HS of the imported goods;
- Country of origin; and
- Destination port.

The results of the verification or technical inspection by the surveyor will be recorded in the Surveyor Report and will be used as a supporting document during customs clearance. If the results of the verification or technical inspection is not satisfactory, the surveyor will issue a letter to reject the issuance of Surveyor Report.

Obligations of the company upon importation

Holders of IP-Used Lithium Battery license are not entitled to transfer and/or trade the imported used lithium batteries to other parties, and they are also required to process the imported used lithium batteries independently to produce goods with New Tariff Post/HS as well as to add value.

Holders of IP-Used Lithium Battery license are required to submit electronic report concerning the importation of used lithium batteries through <http://inatrade.kemendag.go.id> no later than the 15th (fifteenth) of January of the following year.

Verification and technical inspection are required prior to importation of used lithium batteries.

Holders of IP-Used Lithium Battery license are required to submit electronic report upon the importation of used lithium batteries.

The supervision of used lithium batteries importation

The supervision shall be conducted by the Directorate General of Consumer Protection and Commercial Code through compliance assessment (post audit) by examining the followings:

- The accuracy of the import realization reports; and
- The compliance of the laws and regulation.

Administrative sanctions

Suspension

The IP-Used Lithium Battery license will be suspended if the holders do not submit the importation report. To reactivate the license, the holders shall submit the importation report within one month after the suspension date.

Revocation

The IP-Used Lithium Battery license will be revoked if the holders were:

- Proven to have changed data and/or submitted incorrect data;
- Found in non-compliance with the restriction rule on transfer and/or trade;
- processing the imported used lithium battery non-independently;
- Not submitting the importation report despite having exceeded one-month grace period (during suspension); and/or
- Proven guilty based on final court decision in relation to criminal act related to misuse/misappropriation of the IP-Used Lithium Battery license.

Companies with revoked IP-Used Lithium Battery license may only re-apply for a new license after one year from the revocation date.

Closing remarks

Companies that engage in the battery-based electric motor vehicle industry and/or lithium battery industry should closely observe and follow the provisions under Permendag-100 to avoid the above sanctions. Our team could assist companies to apply for IP-Used Lithium Battery license, identifying potential problems and examine the Import Declaration along with its customs compliances.

Permendag-100 have come into force since 29 December 2020.

The IP-Used Lithium Battery license will be suspended if the holders do not submit the importation report.

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 individuals:

Business Tax

Melisa Himawan

Tax Managing Partner

mehimawan@deloitte.com

Business Tax and M&A

John Lauwrenz

jlauwrenz@deloitte.com

Transfer Pricing

Roy David Kiantiong

rkiantiong@deloitte.com

Business Tax

Ali Mardi Djohardi

alimardi@deloitte.com

Business Tax and Business Process Solutions

Ratna Lie

ratnalie@deloitte.com

Transfer Pricing

Balim

bbalim@deloitte.com

Business Tax and International Tax

Cindy Sukiman

csukiman@deloitte.com

Business Tax, Business Process Solutions and Gi3

Roy Sidharta Tedja

roytedja@deloitte.com

Transfer Pricing

Shivaji Das

shivdas@deloitte.com

Business Tax

Dionisius Damijanto

ddamijanto@deloitte.com

Business Tax, Indirect Tax and Global Trade Advisory (Customs)

Turmanto

tturmanto@deloitte.com

Global Employer Services and Business Process Solutions

Irene Atmawijaya

iatmawijaya@deloitte.com

Business Tax

Heru Supriyanto

hsupriyanto@deloitte.com

Business Tax and Tax Management Consulting

Yan Hardyana

yhardyana@deloitte.com

Global Employer Services

Sri Juliarti Hariani

shariani@deloitte.com

Business Tax

Reggy Widodo

rwidodo@deloitte.com

Deloitte Touche Solutions

The Plaza Office Tower, 32nd Floor

Jl. M.H. Thamrin Kav 28-30

Jakarta 10350, Indonesia

Tel: +62 21 5081 8000

Fax: +62 21 2992 8303

Email: iddttl@deloitte.com

www.deloitte.com/id

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