



## Indonesia Tax Info

### Access to Financial Information for Tax Purposes and Update on Exchange of Information

The Indonesian Government has issued Regulation in Lieu of Law ("Perppu") No. 1/2017 on financial information access for taxation purposes with effective date 8 May 2017 to accommodate the Automatic Exchange of Information ("AEOI") agreement that will come into effect starting in 2018. This Perppu revokes certain secrecy regulations, thus allowing the Directorate General of Taxation ("DGT") to obtain access to financial information through regulated procedures without the need for approval from other parties as was previously required. Detailed procedures will be further regulated under a Minister of Finance ("MoF") regulations.

As a further update to the Exchange of Information ("EoI") procedures, the MoF has issued regulation number 39/PMK.03/2017 ("PMK-39") based on international treaties and revoked its earlier regulations on EoI procedures. The update was considered necessary considering the recent developments in the mechanism for the exchange and the types of data and/or information being exchanged, and to implement the terms in the bilateral and multilateral international treaties that Indonesia has agreed with its partner countries.

Important updates under PMK-39 are, among others:

- a) EoI will also be used to obtain information related to tax compliance, in addition to its first and foremost objectives of preventing tax avoidance, tax evasion, or tax treaty abuse.

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- b) Country-by-Country Reporting ("CbCR") is now required as part of the documents to be exchanged in an Automatic EoI.
- c) The Indonesian Tax Authority ("ITA") will use data and information exchanged through EoI as a basis for its tax database.
- d) The MoF will appoint the Competent Authority ("CA") responsible to conduct EoI for Indonesia.

In relation to PMK-39, the MoF recently also issued regulations Number 70/PMK.03/2017 and Number 73/PMK.03/2017 regarding Technical Instructions for Access to Financial Information in relation to taxation. These regulations stipulate that Financial Service Institutions, Other Financial Service Institutions, and Other Entities (including those providing banking service, stock market service, or insurance service) are required to report regularly to the DGT for Taxpayers' Financial Data Information.

The access to financial information as mentioned may include submission automatically and/or on request through a request letter, which must be fulfilled within one month.

#### **Update on Tax Amnesty - Procedure for reporting and oversight of additional assets**

As a follow-up action of the Tax Amnesty program, the ITA has issued DGT regulation number PER-03/PJ/2017 ("PER-03") to further implement Law number 11 of 2016, particularly in regard to the procedures for reporting and supervising of additional assets as reported during the Tax Amnesty program.

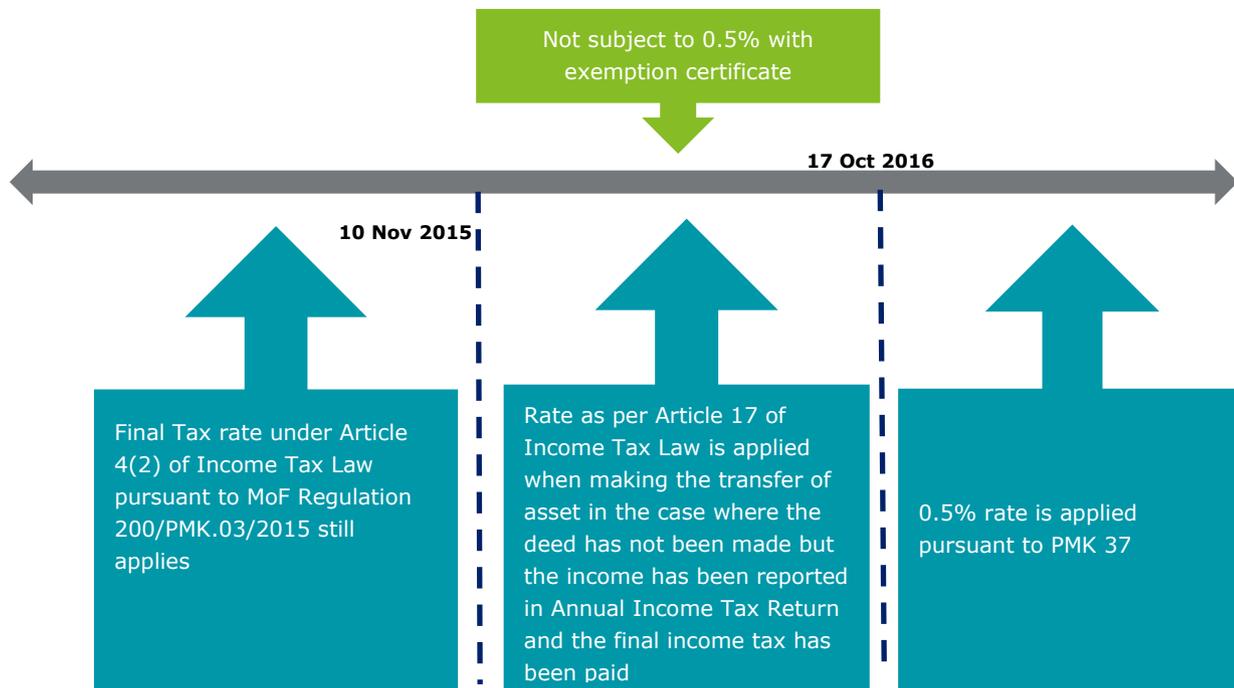
PER-03 revokes the prescribed formats for periodic reports previously stipulated in PER-07/PJ/2016 (attachments X and XI), and a taxpayer that has submitted a periodic report based on that format must resubmit its report based on PER-03.

The periodic reports have to be submitted on or before the due date for submission of the Annual Tax Return. The first year report has to be submitted at the time the 2017 Income Tax Return is due. The second and third year reports have to be made at the time the 2018 and 2019 Income Tax Returns are due.

#### **Payment and Reporting Procedure for Income Tax from Transfer of DIRE or REIT**

The MoF has issued regulation number 37/PMK.03/2017 ("PMK-37") as the implementing regulation of Government Regulation number 40 of 2016 regarding income tax on income derived from transfer of Real Estate using certain Collective Investment Contract schemes (please refer to our October 2016 Tax Info edition).

PMK-37 revokes MoF regulation number 200/PMK.03/2015 and came into force on 6 March 2017. The rates that are applied are as shown in the following table:



### Use of Book Value for Transfer and Acquisition of Assets in Merger, Consolidation, Expansion, or Acquisition

The MoF has issued regulation number 52/PMK.010/2017 ("PMK-52") regarding the above subject on 13 April 2017 and revoked its previous regulation number 43/PMK.03/2008.

The salient points of PMK-52 are as follows:

1. Business acquisition is included as one of the conditions that can use book value transfer. PMK-52 specifically defines business acquisition as a merger of a bank in the form of Permanent Establishment with a resident corporate taxpayer whose capital is divided into shares (with the latter as the surviving entity).
2. PMK-52 introduces cross-border merger and consolidation, with a resident taxpayer as the surviving entity.
3. PMK-52 allows the use of book value for spin-off of a sharia business division/ unit.
4. PMK-52 requires a resident corporate taxpayer to obtain a tax clearance letter ("Surat Keterangan Fiskal") from the DGT.
5. PMK-52 restricts the assets from being transferred within 2 years, except when it is done for the purpose of increasing efficiency. A request letter must be submitted for such purpose.
6. The DGT should approve or reject the book value application within one month after the complete application is received. Otherwise, the book value application should be deemed as approved.

The provisions in PMK-52 shall be applied on merger, consolidations, expansions or business from 1 January 2017 onward. Approval letters for the use of book value issued by the DGT before PMK-52 came into force remain valid.

## **Protocol Amending Indonesia - Netherlands Tax Treaty**

With the issuance of Presidential regulation number 24 of 2017 on 9 March 2017, the protocol amending the tax treaty agreement between Indonesia and the Netherlands will come into force.

The salient points of this protocol amendment are as follows:

1. Withholding tax rate (WHT) of 5% applies to dividends received by a company (excluding partnership) with at least 25% ownership. 10% WHT and 15% WHT apply on dividends paid to pension fund and all other cases, respectively.
2. WHT of 5% on interest if the beneficial owner of the interest is a resident of the other State and if the interest is paid on a loan made for a period of more than 2 years or is paid in respect of a sale on credit of any industrial, commercial or scientific equipment.

Further, the protocol also reinforces clauses of standards on exchange of information, interpretation of the provisions of the tax treaty, and of the term "beneficial owner" in line with the OECD model convention or its commentary. This measure provides more certainty in the application of the provisions of the tax treaty.

## **Indonesia - Laos Tax Treaty**

The DGT has issued SE-05/PJ/2017 to announce the completion of the ratification procedure by the Government of the Republic of Indonesia and the Government of the People's Democratic Republic of Laos concerning the avoidance of double taxation and prevention of tax evasion with respect to income tax.

In respect of tax withheld in the source country, this agreement shall be effective on income derived on or after 1 January 2017. In respect of other taxes, this agreement shall be effective on any taxable income in any taxable year beginning on or after 1 January 2018 and subsequent taxable years.

# Indirect Tax and Customs Focus

## **Update on Clearance of Imported Goods for Use**

The Directorate General of Customs and Excise ("DGCE") has issued regulation number PER-07/BC/2017 ("PER-07") as the third amendment to the previous regulation number PER-16/BC/2016 ("PER-16") as the implementing regulation on clearance of imported goods for use.

PER-07 inserts article 22A to stipulate that a special computer system (hereinafter abbreviated as SKP) will perform verification to match the name of the importer in the Import Declaration and the name of the consignee and/or notify party in the manifest declaration. Officials will verify the conformity in the case that SKP fails to do so. Exceptions are made for import declarations issued by Authorized Economic Operator (AEO) importers and/or importers designated as customs main partners as well as low-risk importers.

PER-07 also stipulates exceptions for Periodic Import Declaration as mentioned in article 4 (4) from:

- Data related to transportation;
- Manifest Declaration number and date with regard to the transported goods; and
- Verification of conformity.

PER-07 is effective from 31 March 2017.

## Customs and Excise Objections

The Minister of Finance ("MoF") has issued regulation number 51/PMK.04/2017 ("PMK-51") regarding customs and excise objections. PMK-51 revokes the previous regulations number 114/PMK.04/2008 regarding excise objections and number 217/PMK.04/2010 regarding customs objections.

Salient points under PMK-51 are as follows:

1. In addition to customs assessments issued due to miscalculation of tariff and/or customs value leading to underpayment; using other than tariff and customs values basis to calculate import duty; and administrative sanctions (fines), PMK-51 now adds that an objection can also be filed on imposition of export duties.
2. PMK-51 further reiterates that a customs objection letter must be submitted no later than 60 (sixty) days from the date of the decision, whereas an excise objection must be submitted no later than 30 (thirty) days from the receipt of the collection letter.
3. The party filing the objection must submit a guarantee in an amount equal to the payable amount being collected with a validity period of 60 (sixty) days from the date of the receipt of the filed objection. The guarantee must have a claim submission period of 30 (thirty) days. The guarantee may be in the form of cash collateral, bank guarantee, or insurance company guarantee (excise bond).
4. Submission of such guarantee is exempted if the imported goods have not been released from the customs area, or the amount being collected has been fully paid, or the decision of the DGCE does not cause any underpayment.

PMK-51 is effective as of 10 June 2017 and revokes the following regulations or provisions:

- a. Articles 9,12 and 14 paragraph 3 of 51/PMK.04/2008;
- b. Articles 24, 25, 26, 27 and 28 of 214/PMK.04/2008;
- c. Article 28 paragraph 4 of 160/PMK.04/2010;
- d. 114/PMK.04/2008 regarding Excise Objections;
- e. 217/PMK.04/2010 regarding Customs Objections.

## New Customs Registration Guidelines

The DGCE has issued regulation number PER-04/BC/2017 ("PER-04") concerning customs registration guidelines to replace PER-10/BC/2014 and its amendment PER-6/BC/2016.

Important changes under PER-04 are as follows;

1. Tax ID number (NPWP) will be used as identification for custom access.
2. The DGCE will issue a letter of notification if the custom registration application letter is approved.
3. The DGCE will verify the completion of the registration application and respond within 1 following day after the completed application is received.

PER-04 adds another requirement whereby the customs registration request must be accompanied with the required documents and submitted through the portal of the Indonesia National Single Window or the portal of the DGCE. All the procedures and instructions of customs registration are governed in PMK-04.

PER-04 revokes the following regulations:

- regulation number PER-6/BC/2016, which serves as the amendment of PER-10/BC/2014, regarding customs registration guidelines; and
- PER-7/BC/2016, which serves as the amendment of PER-25/BC/2010 regarding the implementation of customs registration for customs brokers which use NIK as a company's customs identification number.

PER-04 is effective as of 1 March 2017.

## Determination of FTA import duty tariffs in relation to the ASEAN Harmonized Tariff Nomenclature 2017

Further to the issuance of MoF regulation number 6/PMK.010/2017 ("PMK-6") regarding the transformation of goods classification system from the 10-digit Harmonized System ("HS") Code to the 8-digit HS Code (please refer to our Customs Focus February 2017 edition), the MoF has issued a series of regulations related to Import Duty for the Free Trade Agreements between Indonesia and other nations that adopt the 8-digit HS Code. The new regulations revoke the earlier regulations which governed the 2012-2016 import duty tariffs, while the new regulations stipulate the tariffs for 2017 onwards.

The new regulations stipulate the tariff of import duty for goods imported from ASEAN member countries, namely Brunei Darussalam, Cambodia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, in the context of the ASEAN Trade in Goods Agreement as well as other agreements between ASEAN and any particular countries regarding Free Trade Area.

The summary of the previous vs new regulations in their correlation to the relevant trade agreements is as follows:

Previous Regulations	New Regulations	Trade Agreement	Form of Certificate of Origin
118/PMK.011/2012	24/PMK.010/2017	ASEAN-Korea Free Trade Area	Form AK
208/PMK.011/2012	25/PMK.010/2017	ASEAN Trade In Goods Agreement	Form D
117/PMK.011/2012	26/PMK.010/2017	ASEAN-China Free Trade Area	Form E
221/PMK.011/2012	27/PMK.010/2017	ASEAN-India Free Trade Area	Form AI
208/PMK.011/2013	28/PMK.010/2017	ASEAN-Australia-New Zealand Free Trade Area	Form AANZ
26/PMK.011/2013	29/PMK.010/2017	Indonesia-Pakistan Preferential Trade Agreement	Form IP
209/PMK.011/2013	30/PMK.010/2017	Indonesia-Japan agreement concerning an economic partnership	Form JIEPA

As governed under the previous regulation, the FTA tariff will be based on the tariff as set out in these regulations. It will only be applied on imported goods having a Certificate of Origin that has been signed by the authorized officials in the relevant countries and that complies with the provisions on the origin of goods set out in the ASEAN Trade in Goods Agreement and ASEAN agreements with certain countries regarding Free Trade Areas. However, if the rate of the FTA tariff is higher than the generally applicable rates of import duty in the Indonesian Customs Tariff Book ("BTKI"), the BTKI import duty rate shall apply.

The provisions in these regulations apply to imported goods for which the customs declaration has obtained a registration number and date from the relevant Customs Office.

These regulations came into effect as of 1 March 2017.

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