

## Indonesian Tax Info September 2015



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### **Changes in Regulation on VAT and LGST Treatment on the Importation of Taxable Goods that are Exempted from Customs Duty**

The Indonesian Minister of Finance ("MoF") has issued a Regulation number 142/PMK.010/2015, dated 24 July 2015,

("PMK-142") as the fourth amendment to the previous Regulation number 231/KMK.03/2001 concerning Value Added Tax (VAT) and Luxury Goods Sales Tax (LGST) treatment on importation of taxable goods that are exempted from customs duty.

PMK-142 adds several types of taxable goods into the exemption list, as follows:

1. goods used for geothermal exploration activities;
2. goods that were exported and re-imported with the same quality as that at the time of export (as long as the exporter states that the goods will be reimported at the time of export);
3. goods that were exported for repairs, processing and testing, then re-imported;
4. medicines that are imported under the government's budget and intended for the public interest;
5. materials for human therapy, blood type grouping and tissue classification materials that are imported under the government's budget for the public interest.

PMK-142 is effective as of 27 July 2015.

### **Changes in Regulation on Article 22 Income Tax on Payment for Delivery of Goods and Import or Business Activities in Certain Sectors**

The Directorate General of Taxation ("DGT") has issued a Regulation number PER-31/PJ/2015 ("PER-31") on 5 August 2015 which serves as the third amendment of Regulation number PER-57/PJ/2010 regarding Article 22 Income Tax ("PPH 22") collection procedures for certain deliveries or imports.

The key changes in PER-31 are to align with the recently issued MoF Regulation number 107/PMK.010/2015 ("PMK-107"), as follows:

1. Additional entities/ institutions which are appointed as PPh 22 collectors, include state-owned enterprises including their certain subsidiaries (irrespective of change of name unless they are no longer owned directly by a state-owned enterprise), industries/business entities that purchase coal, metal and non-metal minerals from general mining license (*Izin Usaha Pertambangan*) holders, and business entities that produce and sell gold bars domestically;

2. Updates the applicable PPh 22 rates in accordance with PMK-107 (please refer to our July 2015 Tax Info)
3. Aligns the list of goods exempted from PPh 22 collection with PMK-107, with new items as follows:
  - a. Import of science and technology books or other academic books;
  - b. Import of trains, spare parts and equipment for repair or maintenance as well other train infrastructure by business entities that carry out or support public train operations, including components or materials imported by other parties appointed by those business entities to produce trains, spare parts and equipment for repair or maintenance, as well as infrastructures to be used by the business entities. Previously, this facility was only available for the State Railway Company;
  - c. Import of goods for geothermal business activities;
  - d. Re-imported goods that were exported with the same quality as that at the time of export, or other goods that were exported for repairs, processing and testing, as long as the customs requirements have been fulfilled;
  - e. Purchase of coal, metal and non-metal minerals by general mining license holders on which PPh 22 has been collected by the state-owned enterprises; and
  - f. Sale of gold bars to the Indonesian Central Bank.
4. The exemption from PPh 22 on these imported goods remains valid even if the imported goods are subject to zero-rated customs duty or enjoy the facility of VAT not collected.

PER-13 is effective as of 8 August 2015.

## New Protocol to Existing Tax Treaty between Indonesia and the Netherlands

The governments of Indonesia and the Netherlands have recently signed a protocol to their existing tax treaty. Below are the significant changes:

1. The dividend tax rate on dividend is 10% under the current tax treaty if the beneficial owner of the dividends is a resident of the other state. Under the protocol, the tax rate on dividend is amended as follows:
  - a. 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
  - b. 10% if the beneficial owner is a pension fund that is recognized and controlled according to the statutory provisions of one of the two States and the income of which is generally exempt from tax in the State according to whose statutory provisions it is recognized and controlled;
  - c. 15% in all other cases.
2. Interest.  
The tax rate on interest paid on a loan made for a period of more than 2 years or paid in connection with the sale on credit of any industrial, commercial or scientific equipment is 5% (previously may be exempted from tax).
3. The protocol clarifies that no mutual agreement on the mode of application of the Dividend, Interest and Royalty Articles is required for the application of those articles.
4. The Protocol stipulates that the treaty, and in particular the term "Beneficial Owner," is to be interpreted in accordance with the Organization for Economic Co-operation and Development ("OECD") Commentary prevailing at the time of signature of the tax treaty and any subsequent clarifying modifications thereon.
5. In line with recent international (OECD Base Erosion and Profit Shifting) developments on tax transparency and

exchange of information, the Protocol introduces provisions that widen the exchange of information clause and a collection of taxes clause.

With the changes above, the Indonesia-Netherlands treaty will remain one of the most competitive treaties with Indonesia. While the protocol seems to have resolved the uncertainty surrounding interest withholding tax exemption, it remains to be seen how the Indonesian tax authority will execute the reference to the OECD Commentary in light of the existing local substance requirements under PER-62/PJ/2009 and its amendments.

The effectiveness of the protocol is still subject to completion of the ratification process in both countries. It will enter into force on the first day of the second month following the later of the dates on which the respective Governments have notified each other in writing through diplomatic channels.

## New Tax Holiday Regulation

### Pioneer Industries:

1. Upstream metals
2. Crude oil refinery
3. Basic organic chemicals
4. Industrial Machinery
5. Agriculture, forestry and fishery based processing industry
6. Telecommunication, information and communication
7. Marine transportation
8. Main processing industry in Special Economic Zones, and/or
9. Economic infrastructure (non-government cooperation scheme)

The MoF has issued a Regulation number 159/PMK.010/2015 ("PMK-159") on 16 August 2015 to replace the previous PMK 130/PMK.011/2011 regarding income tax reduction facility or commonly referred to as "tax holiday" facility.

The new tax facilities provided under PMK-159 are as follows:

1. 10% to 100% reduction in corporate income tax (CIT) liability for minimum investment of IDR1 trillion.
2. Up to 50% CIT reduction for certain industries with minimum investment value of IDR 500 billion but less than IDR 1 trillion
3. The tax holiday period is a minimum of 5 years to a maximum of 15 years from the commencement of commercial operation.

An extension of the period of CIT by up to 20% is possible subject to the discretion of the MoF depending on the competitiveness and strategic value of the industry.

The prerequisites to apply for the tax holiday facility are as follows:

1. a new taxpayer;
2. holds principal license or business license which falls under Pioneer Industry;
3. invests at least IDR 1 trillion in a qualified Pioneer Industry, or minimum investment of IDR 500 billion for telecommunication, information and communication industries;
4. if approved, deposits at least 10% of the total investment in an Indonesian bank, which cannot be withdrawn before the company undertakes its investment plan;
5. satisfies the debt to equity ratio as prescribed by the MoF; and
6. must have legal status as an Indonesian legal entity which was validated on or after 15 August 2011.

The application shall be submitted to the Investment Coordination Board (BKPM) along with the following attachments:

1. Copy of Tax ID Number Card (NPWP);
2. Copy of principle license for new investment, including the details;
3. Original statement letter on willingness to place/deposit 10% of the investment value with an Indonesian bank;

4. Tax clearance letter of the Indonesian shareholders or non-resident shareholders that have a permanent establishment in Indonesia, which is issued by the DGT, except if the applicant is owned directly by a state-owned enterprise or is listed in the Indonesian stock exchange.

As a follow-up to this new tax holiday regulation, the BKPM has also issued Regulation number 13 of 2015 on the specific procedures for the application. Upon complete application, the BKPM will provide a recommendation to the MoF at the latest three years since the effectiveness of PMK-159. The application will be subject to further review by a verification committee established by the MoF. Upon approval, the tax holiday facility is only applicable to the income which is granted the facility. Other income (such as capital gain, interest, dividend, royalty, rental, debt waiver, revaluation, etc.) remains subject to tax in accordance with the prevailing tax regulations. Taxpayers that have both types of income stream are required to maintain separate bookkeeping for each income stream.

PMK-159 also states that a taxpayer is only eligible for one tax facility. A taxpayer whose application for tax holiday is rejected by the Minister of Finance may be eligible for the income tax facilities as regulated under Government Regulation number 18 of 2015 ("GR-18") regarding Income Tax Facilities for Investment in certain sectors and/or regions. The procedures for granting the income tax facilities are to be in accordance with the implementation regulation of GR-18 as issued by the MoF.

A taxpayer which obtains the tax holiday facility is prohibited from:

1. importing or purchasing second-hand capital goods;
2. conducting business activities not in accordance with the plan and not covered within the Pioneer Industry during the term of the facility;

3. transferring the asset and/or ownership in the taxpayer which has been granted the tax holiday facility, except for replacing the asset with other more productive asset or transferring the ownership to another taxpayer that already has a tax clearance letter;
4. relocating investments to other provinces in Indonesia or overseas from the beginning fiscal year until five years after the end of the facility period;
5. changing the accounting method to shift the profit or loss, including recognition of income and/or expense method, and depreciation and inventory method, from the beginning fiscal year until five years after the end of the facility period.

The tax holiday facility may be revoked if the taxpayer:

1. at the commencement of commercial production, has realized investment less than the plan;
2. does not deposit 10% of the planned investment, and/or the deposit is withdrawn before realization of the investment;
3. does not submit regular reporting and information requested by the DGT as stipulated in PMK-159;
4. conducts prohibited activities;
5. does not apply for an Advance Pricing Agreement (for taxpayers which are export-oriented and transacting with related parties); and/or
6. based on audit result, misuses the tax holiday facility for tax avoidance or evasion by, among others, conducting inappropriate transfer pricing practices.

# Customs Focus

## Revocation of Special Importer Identification Number (NPIK)

The Ministry of Trade (“MoT”) has issued Regulation number 150/M-DAG/PER/7/2015 (“MDAG-150”) to revoke the use of Special Importer Identification Number (NPIK). NPIK was a licensing instrument which served as an import restriction.

MDAG-150 revokes MoT Regulation number 141/MPP/KEP/3/2002 (as amended by MoT Regulation No. 07/M-DAG/PER/3/2008 and its implementing regulations).

Under MDAG-150, NPIK is no longer required, as the Government wishes to simplify the import licensing process in order to reduce the long dwelling time of imported goods at Tanjung Priok Port. In this way, the importation process of products such as rice, soybeans, corn, textile products, shoes, electronics, and children’s toys would not be hampered.

MDAG-150 also eliminates overlapping licenses, considering that some products are subject to separate licensing requirements (Ketentuan Impor Produk Tertentu).

MDAG-150 is effective from 9 July 2015.

## Safeguard Duty on Steel Wire Rods

The Ministry of Finance has issued Regulation number 155/PMK.010/PER/6/2015 (“PMK-155”) to impose safeguard duty on importation of steel wire rods, as part of its effort to curb the increasing imports of steel wire rods which are causing a serious loss in the local market.

A safeguard duty is:

1. Additional import duty; or
2. Additional preferential import duty based on applicable international trade agreement scheme.

Under PMK-155, the safeguard duty imposed ranges from 5.5% to 14.5%, depending on the useful life.

PMK-155 also provides the classification of import duty based on the HS code and its product specification (size and content) that will be levied for a 3-year period. However, there are exceptions for several countries as listed in the regulation.

For importation of steel wire rods from the excepted countries and countries which apply international trade agreement schemes, the importer shall submit the Certificate of Origin.

The regulation is effective from 18 August 2015.

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