

TaxFlash

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New tax procedures law

The House of Representatives passed into law new tax procedures 19 June, following various delays and debates.

The key feature of this law is that for tax objections and appeals, the existing rule of "Pay first, argue later" has been removed. A taxpayer who files an objection does not need to pay any tax in relation to the amount in dispute. However, if the DGT rejects the objection, the taxpayer must settle the undepaid amount plus an administrative penalty amounting to 50% of it. This requirement is deferred if the taxpayer files an appeal in respect of the DGT's objection decision. But if the court rejects the appeal, the taxpayer must settle all of the underpaid amount plus an administrative penalty amounting to 100 percent of it. Taxpayers can still choose to pay the entire amount in dispute in order to protect against penalties in case they lose the objection/appeal, but this is now their choice – there is no more compulsion [although we note that the tax court law separately says companies must pay 50% of the assessed amount if they wish to fight in the tax court – we are hopeful that this will be amended to mirror the new tax procedures law soon].

The other changes covered by the new law include the following:

- A moratorium for not conducting tax audits to individual taxpayers who voluntarily register with the DGT office to obtain tax ID numbers (NPWP). However, a tax audit may still be performed if the DGT has information which indicates that the tax returns filed are incorrect. A request for a tax refund will also call for a tax audit.
- Tax office can issue retrospective assessments for taxpayers whose NPWPs are issued by the DGT without the taxpayers' voluntary requests ("ex-officio"), but this is capped at 5 prior years.
- The provision dealing with the joint responsibility for VAT in a sale-purchase transactions is deleted. This implies that the seller, in general, is solely responsible for the settlement of VAT.
- Stricter rules for tax audits are incorporated in the law. For example, written tax audit findings must be issued by the DGT, followed by a "closing conference". Failure by the DGT to fulfil these conditions may result in the cancellation of the tax assessments issued. Taxpayers, on the other hand, are required to provide information and documents within a month after the date of request. Documents provided beyond this time limit may be ignored in the tax assessment and in the tax objection process. This is a difficult and onerous requirement. You may wish to consider pre-preparing audit trail documents even before an audit starts [eg. if you expect a refund of tax, you should expect a tax audit so you should prepare as early as possible documents likely to be requested so you don't miss any deadlines].

Easier establishment of free trade zones – but no new ones yet

Early this month, the government issued a new regulation regarding free trade zones and free ports. The main objective of the new regulation is to make the establishment of free trade zones along with the free ports easier. Under the old law, such zones could only be established by involving the House of Representatives. Now, the government can establish free trade zones and free ports using regulations without involving the House. A free trade zone is typically regarded as a zone separated from the customs area. It follows that special treatment on customs, VAT, luxury sales tax, and excise may apply in the zone differently from the customs area. There are no new zones established just yet – but we expect that with the simplified procedures, new zones should be established in not too distant future.

Withholding tax on advertising-related services

The DGT has recently declared that SE-10/PJ.3/1998, a withholding tax ruling designed specifically for advertising-related services, is no longer applicable. There is now uncertainty whether the “QQ” mechanism, which allows one party to withhold tax on behalf of another, is still applicable. Taxpayers in the advertising industry, and those who use advertising services, should contact their tax professional because withdrawal of this ruling has wide reaching implications for them, including what is the relevant amounts to withhold from advertising payments post withdrawal of this ruling.

Tax administration simplification plans

The President is working towards improving the investment climate in Indonesia. As part of this, he has recently issued a new Presidential Instruction (No. 6/2007) which outlines plans, among other things, for simplifying the tax audit and VAT refund procedures, improving general services to taxpayers by establishing more primary tax service offices (“KPP Pratama”), and improving internal control and administration within the DGT office. Several regulations will be issued by the DGT in due course which we hope will greatly improve taxpayers general experience when dealing with the tax office.

Your PricewaterhouseCoopers contacts

Ali Mardi
ali.mardi@id.pwc.com

Anthony J. Anderson
anthony.j.anderson@id.pwc.com

Anton Manik
anton.manik@id.pwc.com

Engeline Siagian
engeline.siagian@id.pwc.com

Lili Tjitadewi
lili.tjitadewi@id.pwc.com

Margie Margaret
margie.margaret@id.pwc.com

Nuryadi Mulyodiwarno
nuryadi.mulyodiwarno@id.pwc.com

Robertus Winarto
robertus.winarto@id.pwc.com

Tim Watson
tim.watson@id.pwc.com

Ali Widodo
ali.widodo@id.pwc.com

Ay Tjhing Phan
ay.tjhing.phan@id.pwc.com

Christian Pellone
christian.pellone@id.pwc.com

Heru Supriyanto
heru.supriyanto@id.pwc.com

Margaret Duong
margaret.duong@id.pwc.com

Melisa Himawan
melisa.himawan@id.pwc.com

Ray Headifen
ray.headifen@id.pwc.com

Tomy Harsono
tomy.harsono@id.pwc.com

PT. Prima Wahana Caraka
PricewaterhouseCoopers
JI HR Rasuna Said Kav. X-7 No. 6
Jakarta 12940, INDONESIA
Tel: +62 21 5212901
Fax: +62 21 52905555 / 52905050
www.pwc.com/id

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