Tax
Indonesia

TaxFlash

August 2007 No. 5/2007

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2007 negative list of investments

The government recently introduced a new investment law, which made all types of investments open except for those prescribed / restricted on a "negative list". The government has now released the negative list of investments (NLI).

The NLI is generally aimed at maintaining a balance between the state's passion for large investments and the need to preserve certain national interests such as protecting and developing small and medium business enterprises (SMEs), ascertaining life environments sustainability, etc.

The 2007 NLI contains the following categories:

- Areas completely closed to any investments;
- Areas open only to domestic investments; and
- Areas open to foreign investments with certain requirements (joint venture, cooperation with SMEs, special government permit, or operating in certain designated regions)

The 2007 NLI preserves the same subsectors which are completely closed to any investments. It reserves more subsectors for domestic investments. However, the number of subsectors allowing 100% ownership by foreign investors shrinks in the 2007 NLI.

The "premium" sectors are offered to foreign investors with a maximum limit of capital participation. These include:

- Energy and mineral resources: 95%
- Financial: 80% (insurance), 85% (venture capital) and 99% (banking);
- Telecommunication and informatics sector: 65% (cellular and satellite network services), 65% (data communication system services), and 49% (some other subsectors);
- Public works: 55%;
- Trade: 60% (direct selling through such media as TVs, newspapers, radios, or catalogues).

The use of Indonesian Standard Business Lines Classification (KBLI) to classify the designated sectors and subsectors provides more clarity. Nevertheless, it still leaves some ambiguities:

1. How to treat sub-sectors which show up in multiple categories like public works.
2. Whether PMA companies are now required for all investments and how this affects investments which sometimes occur by way of "branch" registration like oil and gas and banking.
3. How internal BKPM guidelines interact with the new law i.e. whether the new law overrides BKPM approval guidelines where there are conflicts. For instance, is advertising which was restricted by BKPM now open because it is not specifically on the NLI.

For further info and advice, please contact our investment group Laksmi Djuwita or Adi Pratikto.

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USD accounting for tax

The Minister of Finance (MoF) issued Regulation No. 49/PMK.03/2007 early May about USD accounting for tax to replace the old regulation (533/KMK.04/2000). Most features covered in the old regulation are preserved. For instance, IDR non-current asset balances must be converted into USD at the beginning of the USD accounting year using the historical foreign exchange rates (FX rates). The IDR balances of other assets and liabilities must be converted into USD using the FX rates applicable at the end of the last IDR accounting period. During the current year, transactions denominated in currencies other than USD must be converted into USD using the FX rates applicable at the transaction dates.

A few changes and new features are added by Reg. 49:

- A collective investment contract (KIK) is acknowledged as a qualifying party for applying USD accounting to the extent it issues USD-denominated investment funds.
- The DGT must respond to an approval request for maintaining USD accounting in 25 *working* days from the request filing date. If the DGT does not respond within this period, automatic approval prevails. Under the old regulation, the time limit for approval is 30 days from the request filing date.
- A taxpayer who maintains USD accounting may request for approval to the DGT for returning to IDR accounting. The DGT must respond such a request within 25 days of the request filing date or else automatic approval prevails. Once approval is granted, the taxpayer may not reapply for approval for maintaining USD accounting during five years from the cancellation of the USD accounting.
- Maintenance of USD accounting without DGT approval (or notification to the DGT in the case of PSC and CoW companies) is considered a breach of bookkeeping rule for tax set out in Article 28 of the tax procedures law. It is noted that such a breach may open the door for the DGT to calculate tax liabilities using deemed-profit methods.

2007 Energy Law

The House of Representatives approved to enact a new Energy Law in its plenary session on 17 July. The law will serve as a basis for the state's broad energy policy making and will be complementary to the other energy-related laws, i.e. the 1997 Nuclear Energy Law, the 2001 Oil and Gas Law, and the 2003 Geothermal Law. Two other proposed bills, each dealing with electricity and mining respectively, are now being deliberated by the House and aimed to replace the 1985 Electricity Law and 1967 Mining Law.

The main objective of the new law is to secure sustainable energy supply as well as to promote energy resources conservation and the use of renewable energy resources. The government now may give incentives or facilities to parties contributing to energy resources conservation and the use of renewable energy resources. They not only include energy producers or suppliers but also users and producers of energy conservation equipment. On the contrary, the government may impose disincentives to those failing to undertake energy resources conservation measures.

The law does not elaborate on the types of incentives/disincentives and facilities. It is noted, however, that the minister of energy and mineral resources has been reportedly discussing this matter with the DGT. This is an indication that tax incentives are under consideration. There are already some tax incentives available to certain industries, including biofuels and other renewable energy resources outlined in Presidential Decree GR 2007/1.

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