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- **Only tax experts may act as a proxy**
In most cases, only certified tax consultants are eligible to act as a proxy. This new rule applies to external and internal proxies. The validity of tax-related documents signed by non-eligible proxies is at risk.
- **Three months for a refund of tax paid by mistake**
By default, it may take 12 months to get a tax refund. However, if the refund pertains to tax which has been paid only by mistake, the time limit is shortened to three months.
- **The DGT has been given a deadline for NPWP/NPPKP cancellation, but practical issues remain**
You may have waited for months or even years for confirmation of an application for NPWP cancellation. However, the DGT has not yet issued any decision. Now, a strict 12-month time limit has been activated. Beyond the time limit, if no decision is issued, the application is considered to be approved.
- **Transitional provisions.**
There are still a lot of uncertainties. GR 80 still lacks clarity in certain areas.

Only tax experts may act as a proxy

The tax administration (KUP) law treats company officers (directors specified in the *Articles of Association*) as the valid representatives of their company. It follows that they are held responsible for the undertaking of the company's tax rights and liabilities. This includes such simple things as signing tax returns and tax invoices through to explaining the company's affairs in tax audits, objections, and other dealings with the Indonesian Tax Office (ITO).

The law allows directors to appoint one of their employees to act as an *internal proxy* on their behalf using a specific *proxy letter*. Normally, an *internal proxy* would undertake only such simple things as signing tax returns and tax invoices. For more complex tax affairs such as attending tax audits, tax objection discussions, and appeal proceedings, the directors may need to appoint an *external proxy* qualified as a tax expert.

In the past, only external proxies were subject to the Minister of Finance's (MoF) regulation. However, following the 2007 KUP law, the MoF issued regulation 22/PMK.03/2008 (Reg. 22) setting out requirements which are applicable not only for *external proxies* but also for *internal proxies*. The distinctive feature is that either proxy must be a certified tax expert, i.e., holder of the *state tax brevet certificate* or another certificate issued by eligible business schools confirming the completion of study in a tax subject, which will be further regulated in a Director General of Tax's (DGT) regulation.

However, the designated certificates are not an all-the-time passport to act as a proxy. Under Reg. 22, such basic certificates serve well only for companies with annual turnover not exceeding Rp2.4 billion (USD270,000). Once the threshold is passed, proxy affairs may only be entrusted to *certified tax consultants*. These are certified tax experts who have obtained the DGT licence to practise as a tax consultant.

We recommend you revisit your *internal proxy* situation. Please bear in mind that if they are not eligible tax experts, the tax-related documents signed by them may be declared invalid by the DGT and penalties could

apply. We are aware of examples where the DGT has already declared tax invoices invalid because they have not been correctly signed. Care is required.

The 2007 KUP law offers a solution to the problem resulting from this development. It allows three types of signatures: conventional, electronic, and by stamp. That is directors could sign electronically or by stamp thereby overcoming the need for a proxy in many situations. Unfortunately, the last two types are yet to be elaborated on in an MoF regulation.

Three months for a refund of tax paid by mistake

Tax may have been paid, withheld, or collected by mistake. This could mean that the tax should have never been due or it has been incorrectly determined, resulting in a payment, withholding, or collection in excess of the correct amount. From the perspective of the *tax beneficiary*, i.e. the party whose tax is paid, withheld, or collected, this situation may cause a tax overpayment. A refund application must be submitted to the DGT to get the overpayment repaid.

By default, a tax refund application will trigger a tax audit and the applicant must be patient enough to wait for 12 months. However, if the overpayment has resulted only from a tax payment, withholding, or collection by mistake, under MoF Reg. 190/PMK.03/2007, the time limit is shortened to three months from the filing date of a complete application letter.

The refund application may only be made by the tax beneficiary. However, under certain circumstances, this could be done through the party who has withheld or collected the tax in question.

Please contact your tax adviser for further information.

The DGT has been given a deadline for NPWP and NPPKP cancellation, but practical issues remain

The KUP law specifies the time limit under which the DGT must issue a decision following a request from a taxpayer for the cancellation of a *tax ID number (NPWP)* or *taxable entity confirmation number (NPPKP)*. As far as NPWP cancellation is concerned, the time limit is six months from the filing date of the complete request for individual taxpayers and 12 months for corporate taxpayers. For NPPKP cancellation, the time limit is six months for all types of taxable entities.

Nothing is stated in the law about the consequence of the DGT failing to issue any decision within the time limit. In this respect, the 2007 KUP does not differ from the 2000 KUP. In practice if the deadline has passed and the DGT has not issued any decision, nothing happens.

The MoF has just issued regulation 20/PMK.03/2008 regarding NPWP and NPPKP cancellation. The distinctive feature of the regulation is that the deadline does matter now: if the time limit has passed and the DGT has not issued any decision, the request of the taxpayer concerned is considered to be approved. In such a situation, MoF 20 requires the DGT to issue a decision on the NPWP/NPPKP cancellation within a month after the deadline.

However, apart from the above, MoF 22 asserts that NPWP/NPPKP cancellation only serves for administrative purposes. It goes on to say that the cancellation is not meant to eliminate the tax liabilities of the taxpayer or the taxable entity concerned.

In practice the MoF 20 may be a little practical benefit apart from not having to file tax returns. It appears the door still remains open for the DGT to seek collection of tax liabilities.

Transitional provisions

It is not always easy to determine whether a particular tax affair should be dealt with in accordance with the 2000 or 2007 KUP law. The Government Regulation 80/2007 (GR 80), with its eight designated cases, provides some clarity but uncertainties remain.

We will discuss the transitional provisions in our next edition. However, two features of GR 80 are worth highlighting at this stage. Firstly, as a rule, 31 December 2007 is specified to be the cut-off date in determining which KUP law applies. Secondly, the eight designated cases are attributed to three types of events:

- Filing of the relevant letter/document with the DGT office;
- Issuance of the relevant DGT decision letter
- The start of an allegedly defective tax audit.

A designated event taking place before the cut-off date should be dealt with in accordance with the 2000 KUP law. Those taking place thereafter, should follow the 2007 KUP law. For example, if you file an objection letter in January 2008, regardless of the tax year to which it belongs, it will be processed in accordance with the 2007 KUP law. In contrast, your application for NPWP cancellation filed in December 2007, based on GR 80, will be dealt with in accordance with 2000 KUP law.

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