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Procedures for Article 22 Income Tax Exemption

Recently, the Director General of Taxes (DGT) issued Regulation No.PER-15/PJ/2011 (PER-15) as the amendment of DGT Regulation No.PER-57/PJ/2010 (PER-57) regarding Procedures for Article 22 Income Tax Collection. These are the implementing regulations of Minister of Finance (MoF) Regulation No.154/PMK.03/2010 (PMK-154).

PER-15 is effective from 6 June 2011 and contains the following matters:

1. clarification that Article 22 Income Tax exemption applies automatically and does not require any Tax Exemption Certificate on: a) import of goods that have been exempted from Import Duties and/or Value Added Tax (VAT); and b) and temporary import for re-exporting; and
2. provides detailed procedures for obtaining Article 22 Income Tax Exemption Certificate relating to the import of gold bar for the export of gold jewelry.

This regulation is mainly intended to encourage the production of gold jewelry in Indonesia.

Procedures for obtaining Article 22 Income Tax Exemption Certificate for other eligible taxpayers are laid down in DGT Regulation No.PER-1/PJ/2011 (please refer to our TaxFlash No.02/2011).

Branch Profit Tax Exemption – further guidance

In our TaxFlash No.03/2011 we discussed the eligibility for permanent establishments (PEs) to be exempted from the imposition of Branch Profit Tax (BPT) if they reinvest the after-tax profits in Indonesia. This provision is regulated under the MoF Regulation No.14/PMK.03/2011 (PMK-14).

Recently, the DGT released the implementing regulation of PMK-14 through the issue of Regulation No.PER-16/PJ/2011 (PER-16) regarding Notification Procedures on the Reinvestment of After-tax Profits of a PE. PER-16 is dated and came into effect on 6 June 2011.

As regulated in PMK-14, PER-16 stipulates the obligation for a PE to prepare a written reinvestment notification in order to claim BPT exemption. The PE must notify the preferred form of investment, its realization and the start of commercial production if the reinvestment is made in a newly established company.

Furthermore, PER-16 provides detailed requirements to be fulfilled by the PE in the reinvestment notification. A standard form which covers the notification of preferred form of investment, the realization and the start of commercial production is provided in this regulation. The notifications should be signed by the PE's authorized representative or proxy. The notifications should also be annually submitted to the Tax Office where the PE is registered, at a minimum for the first three years after the realization of capital participation, acquisition of a fixed asset or investment of an intangible asset.

The notification of preferred form of investment should be attached to the corporate income tax return (CITR) of the tax year when the after-tax profits are obtained while the notification of reinvestment realization should be attached to the CITR of the following tax year after obtaining the after-tax profits.

With regard to the start of commercial production, PER-16 requires the PE to provide notification at the latest in the following tax year subsequent to the reinvestment realization for which the timing of starting commercial production is subject to the Tax Office's approval.

The Tax Office will review the submitted notification and if it is found that the application was incompletely filled in, the Tax Office will notify the PE to complete the outstanding information. In this regard, the PE should update the notification, at the latest one month after the delivery date of the Tax Office's notification. Failure to provide the updated notification or not submitting any reinvestment notification to the Tax Office will lead to the imposition of 20% BPT (or a reduced rate under a tax treaty).

Tax Collection Policy

The DGT has set out its tax collection policy for fiscal year 2011 to optimize its revenue from the collection of tax in arrears by issuing Circular Letter No.SE-36/PJ/2011 (SE-36) dated 30 May 2011. The collection targets this year will include Income Tax, VAT, and Land and Building Tax and the priority will be on tax in arrears:

1. that will soon expire;
2. of which the taxpayer is included in the list of debtors as the largest 100 tax in arrears in the Tax Office where the taxpayer is registered;
3. with value of more than IDR 10 billion per taxpayer;
4. of which the taxpayer has high liquidity and goodwill to pay the tax due;
5. of which the taxpayer has the ability to pay but is not cooperative;
6. of which the taxpayer is a celebrity or a public figure;
7. of which the taxpayer is in a state of bankruptcy;
8. of which the taxpayer may be liquidated or in a liquidation process.

The Tax Office will also increase the coordination with other government bodies in the intensification of the tax collection.

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