

# **TaxFlash**



## ***New development on establishing a Public Works/Construction Representative Office***

The Minister of Public Works (MoPW) has just issued a new regulation No.10/PRT/M/2014 (PRT-10) effective as of 8 October 2014 stipulating the guidance for a foreign construction company to establish a Representative Office in Indonesia for the performance of construction services. These are commonly known as a Public Works/Construction Representative Office (PWRO). This new regulation replaces the previous regulation No.05/PRT/M/2010, which issued in year 2010.

PRT-10 applies to both existing PWRO and foreign construction companies that wish to establish a new PWRO in Indonesia

PRT-10 stipulates some additional requirements that need to be fulfilled to allow foreign construction services to establish a PWRO in Indonesia. Those additional requirements include additional information and document requirements for application purposes both for new PWRO establishment and extension of existing PWRO license. PRT-10 also provides various templates to ease the foreign construction company to prepare the application.

In addition to the licensing requirements, PRT-10 also sets out new requirements and additional provisions to clarify certain matters from the previous regulation.

The following are some important provisions in the new regulation compared to the previous one:

Aspect	Old regulation	New regulation
Timing of joint operation (JO) formation	Unclear, in practice can be before the tender process or before starting project	Must be formed from tender offering process
Criteria of JO partner	Must be a 100% locally owned construction company	Can be a construction services company which has a minimum of 65% local ownership and fulfils some other criteria subject to a prior approval from the MoPW
Allocation of work to JO partner	Not regulated	<ul style="list-style-type: none"> <li>For construction contractor work : <math>\geq 30\%</math> of project value</li> <li>For construction consultancy work : <math>\geq 50\%</math> of project value</li> </ul>
Type of work that can be performed by a PWRO	Construction project with : <ol style="list-style-type: none"> <li>1. High risk;</li> <li>2. High technology; and</li> <li>3. High costs</li> </ol>	Similar criteria but elaborate further high costs project as projects with a value of $\geq$ IDR100 billion for construction contractor or $\geq$ IDR10 billion for construction consultancy
Place of services Performance	Not regulated	<ul style="list-style-type: none"> <li>For construction contractor work : <math>\geq 50\%</math> of project value must be performed in Indonesia</li> <li>For construction consultancy work : whole services must be performed in Indonesia</li> </ul>
Transfer of knowledge requirement from expatriate	Not regulated	Contain a specific provision on the requirements for the transfer of knowledge.
Restriction on management	Not regulated	Director, commissioner and chief representative of the foreign construction company must not be a director or commissioner in another Indonesian construction company

There are still some areas to be clarified such as the requirements if a PWRO engages in integrated construction services i.e. engineering procurement and construction (EPC) work, whether there is a requirement to set up a PWRO for design or engineering work which can entirely be performed offshore, any specific requirements on the ratio between expatriate and Indonesian employees in a PWRO and the possibility of having different JO partners for different projects.

As this regulation is new, MoPW is planning to hold a public socialisation by the end of November 2015 which hopefully will also clarify the above areas.

PRT-10 also stipulates that PWROs are now able to obtain an Accreditation Certificate (*Sertifikat Penyetaraan*) from the National Construction Services Development Board (*Lembaga Pengembangan Jasa Konstruksi/LPJK*) at the latest by six months from the effective date of the regulation (i.e. 7 April 2015). The PWRO has been determined to be a construction company without qualification which is subject to a 4% final income tax on fees for construction work performance or 6% final income tax on fees for construction work planning or supervision. This is because LPJK was not able to issue qualification certificate for PWROs. If the Accreditation Certificate can be used as a qualification certificate for tax purposes, it is expected that PWROs may be subject to a lower final tax rate on construction services.

For further details about this new regulation, please ask your usual contacts at PwC Indonesia.

## ***Taxpayers' data cleansing***

The Director General of Tax (DGT) has set out a series of actions to revamp taxpayers' data recorded in the Directorate General of Tax master file so that the data will be more relevant and reliable. This program is regulated in the DGT Circular Letter No.SE-37/PJ/2014 (SE-37) dated 22 October 2014 regarding taxpayers' data cleansing.

This data cleansing program is focused on taxpayers with certain conditions, as follows:

1. Tax ID Number with dual user
2. Taxpayers with dual identity or having more than one Tax ID Number
3. Taxpayers with no tax transaction in the last three years
4. State Treasuries that are inactive or have had no tax transaction in the last five years
5. Non-effective taxpayers for more than five years
6. Taxpayers with a Tax ID that has not been validated

A data cleansing team has been set up to verify or examine existing information available in the master file and to give a recommendation to the DGT in issuing a decision on the relevant taxpayer, such as revoking the Tax ID Number for taxpayers who have more than one Tax ID.

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