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TaxFlash

Update for taxpayers' maintaining English language and USD bookkeeping

On 7 January 2015, the Minister of Finance (MoF) issued Regulation No.1/PMK.03/2015 (PMK-1) as an amendment to MoF Regulation No.196/PMK.03/2007 regarding Procedures for Foreign Language Bookkeeping and Currency other than Rupiah as well as the Obligation to Submit Annual Income Tax Returns for Corporate Taxpayers.

PMK-1 introduces new requirements in this area under the following circumstances:-

a) where the taxpayer has already obtained a Decision from the Director General of Tax or the Head of Regional Tax Office, etc. but the Decision notice is damaged, not readable or has been lost; or

b) where the taxpayer has a "contract" with Government (e.g. a Contract of Work or Cooperation Contract/PSC) which provides for English and USD bookkeeping but the contract itself has expired.

To continue with the English language/USD entitlement the taxpayer should:-

- in the event of scenario a), request for the Decision to be re-issued; or
- in the event of scenario b), submit an application to the Head of Regional Tax Office where the taxpayer is registered within one year of the enactment of PMK-1 (i.e. by 6 January 2016) or one year after the expiry of the relevant contract

Corporate Income Tax rate for 3rd Gen CCoWs and 6th/7th Gen CoWs Companies

On 24 November 2014, the Director General of Tax (DGT) issued Circular No.44/PJ/2014 (SE-44) providing its views on the Corporate Income Tax (CIT) rate applicable to taxpayers holding 3rd generation Coal Contract of Works (CoWs) and 6th/7th generation Mineral CoWs (which were generally signed between 1996 to 2000). The DGT is now indicating that these taxpayers are subject to CIT at the rate of 30%.

The CIT rate applicable to these taxpayers has been a longstanding issue not least because these CCoWs/CoWs typically provide a *lex specialis* tax framework linked to the 1994 Income Tax Law (i.e. with a 30% maximum CIT rate) but with a specific entitlement to any CIT rate reduction to be made via "Government Regulation" (noting that the expectative of a CIT reduction existed at the time of the 1994 CIT Law).

The rate reduction was ultimately introduced via legislation rather than via a Government Regulation. The issue has therefore been whether the legal instrument which provided the rate reduction should be relevant to a taxpayer's ability to enjoy the reduction.

SE-44 states that, in the DGT's view, the CCoW/CoW reference to "Government Regulation" should be read narrowly so as to be restricted to the regulatory instrument which implements the reduction. Consequently, the 30% rate is considered to continue to apply. The DGT has also instructed for the socialization of this matter and a focus on taxpayers previously applying the 25% rate (including presumably on monthly CIT instalments).

Whilst SE-44 provides the DGT's views it is still possible that taxpayers will move to contest the interpretation. Nevertheless holders of these CCoWs/CoWs should review their position in light of this development.

New Value Added Tax reimbursement procedures for PSCs

Production Sharing Contracts (PSCs) signed prior to Government Regulation No.79/2010 (GR-79) generally entitle the holder to a "reimbursement" of input Value Added Tax (VAT) costs (out of Government share) rather than to cost recovery of the VAT. Reimbursement represents an absolute financial advantage *vis a vis* cost recovery as it is on a dollar for dollar basis. The principle arguably harks back to the original PSC premise of contractor protection from all Government taxes (other than Income Tax).

On 5 December 2014, the MoF issued Regulation No.218/PMK.02/2014 (PMK-218) setting out new procedures for VAT reimbursement by PSCs. PMK-218 is effective from 2 February 2015 and replaces MoF Regulation No.64/PMK.02/2005 (PMK-64).

Some of the key reimbursement-specific changes are as follows:-

a) that Government Share is to exclude the Government's entitlement to FTP (this had been an unclear area in the past but this interpretation does reduce the pool of funding available for reimbursement);
b) that reimbursement is to be subject to confirmation from the Directorate General of Taxes via a "Tax Clearance Document" (previously the tax authorities played no verification role in this process);
c) that SKK Migas may offset a reimbursement entitlement against any contractor "overlifting" (previously overliftings were settled in cash); and
d) that there is no time frame for obtaining the full verification from SKK Migas (this was previously set at 45 working days).

These arrangements are to be further outlined under an implementing SKK Migas regulation.

In an additional change PMK-218 indicates that the reimbursement entitlement <u>excludes</u> input VAT arising from LNG processing (as well as VAT arising on other VAT "exempt" or non-recoverable supplies). Whilst the exact scope of this alteration is still being determined this has the potential to fundamentally impact the economics of at least some of the LNG production in Indonesia (and might even be challengeable in a contractual sense). It is also not clear if this principle could be extended into other "downstream" VAT input costs. This issue in particular needs to be monitored closely.

Land and Building Tax reduction for PSCs at exploration stage

Aiming to support domestic oil and gas production, especially for the mining of oil and gas at exploration stage, the MoF issued Regulation No.267/PMK.011/2014 (PMK-267) on 31 December 2014 that provides tax incentive for this sector in the form of Land and Building Tax (*Pajak Bumi dan Bangunan/PBB*) reduction.

The reduction is granted on the sub-surface component and can be amounting up to 100% of the PBB due on that component. This incentive is applicable for year 2015 onwards. The oil and gas contractor should fulfil the following requirements to enjoy this tax incentive:

a) its PSC with the Government must be signed after 20 December 2010 (i.e. the effective date of Government Regulation No.79/2010 regarding Reimbursable Operational Costs and Income Tax Treatment on Upstream Oil and Gas Operation);

b) has submitted Tax Object Notification Form (*Surat Pemberitahuan Objek Pajak/SPOP*) to the Tax Service Office; and

c) provides recommendation letter from the Minister of Energy and Mineral Resources (MoEMR) that stipulates that the PBB object is still at exploration stage.

The reduction is granted yearly for a maximum of six years since the PSC signing date and can be extended for up to four years (subject to recommendation letter from the MoEMR).

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