TaxFlash

Tax Allowance Facility - Revamped

On 6 April 2015, the Government finally issued Regulation No.18/2015 (GR-18), which updates the package of income tax facilities available for companies that invest in certain designated business sectors and/or regions, based on Article 31A of Income Tax Law No.36/2008 (Law-36). GR-18 will come into effect starting 6 May 2015 (i.e. 30 days after its enactment date) and revokes a series of previous GRs that regulate this tax concession, i.e. GR No.1/2007 as most recently amended by GR No.52/2011.

Who is eligible?

New rules on the requirements

GR-18 takes out detailed requirements under each designated business sector and/or region which relate to the investment value, number of Indonesian workers and size of the business area.

This regulation only sets out new high level criteria as requirements for enjoying the tax facilities, and leaves the detailed requirements for the relevant ministers to determine by issuing separate ministerial decrees.

The high level criteria are as follows:
a. high investment value or for export purposes;
b. high absorption of manpower; or
c. high local content.

GR-18 also eliminates the following requirements of the old GRs which seemed to create some burdens for investors interested in applying for this tax concession:

a. The tax facilities can only be utilised after the taxpayer has realised at least 80% of its investment plan (except for the taxpayers which were already granted the tax facilities prior to the enactment of GR-52);
b. A taxpayer for whom investment approval was issued prior to the enactment of GR-52 should have a new investment plan of a minimum of Rp 1 trillion and not have entered into commercial production by that enactment date to be able to apply for the tax facilities.

Business sectors and/or regions

GR-18 now covers 143 eligible types of investment (based on Business Classification Field/*KBLI*), including 66 types of investment in designated sectors, and 77 types of investment in designated sectors and also in designated regions.

Key new targets include the construction of smelters for mining products as well as the manufacturing of communication devices, motor vehicles and ships. The details are available on request, from your usual PwC Indonesia contact.

Limitation

GR-18 confirms that the taxpayers who obtain this tax concession cannot use the 1% final tax on turnover under GR No.46/2013, as well as other tax facilities for Integrated Economic Development Zones (*Kawasan Pengembangan Ekonomi Terpadu/KAPET*) and Tax Holiday.

Expansion of the definition of investment

In the previous regulations, only fixed assets investment were acknowledged as investment. GR-18 now acknowledges all forms of investment, including intangible assets. Consequently, this will add accelerated amortization of intangible assets to the tax facility.

Changes in the tax facility package

The tax facilities provided generally remain the same, i.e.:

1. A reduction in net taxable income of up to 30% of the amount invested in the form of fixed assets (including land), prorated at 5% for 6 years of the commercial production, and provided that the assets invested is not being misused or transferred out within certain period.
2. Acceleration of fiscal depreciation and amortisation deductions.
3. A reduction of the withholding tax rate on dividends paid to non-residents to 10% or the applicable reduced tax treaty rate.
4. Extension of tax-loss carry forwards longer than 5 years but not more than 10 years.

Below are the changes in the implementation of the tax facility:

Tax facilities	Old	New
Period where the fixed assets under point (1) above cannot be used for other purpose or transferred out	6 years from the date of tax facilities approval	Whichever is longer between: • 6 years from the start of commercial production; or • the asset's useful life based on accelerated depreciation/amortization
Acceleration of fiscal depreciation and amortisation deductions	Only accelerated fiscal <u>depreciation</u> is available	Accelerated <u>amortisation</u> of intangible assets is also available on top of accelerated depreciation (please refer to 'Expansion of the definition of investment')

Changes and addition of options to extend the tax-loss carry forward:		
• **Employing Indonesian workers at a minimum of 1,000 people for 5 consecutive years**	Previously not available	Additional 2 years
• **Research and development in Indonesia for product development or production efficiency of at least 5% of the investment within 5 years**	Additional 1 year	Additional 2 years
• **Business expansion cost is sourced from earning after tax in a tax year prior to the issue of capital investment approval for expansion**	Previously not available	Additional 2 years. • granted for tax loss for the year of starting the commercial production • calculated based on proportion of earning after tax invested as expansion against the net book value of all fixed assets at year-end in which the production has started
• **Exports make up at least 30% of the total sales for the investment conducted outside the bonded zone**	Previously not available	Additional 2 years

Transitional provisions

To provide certainty for taxpayers at various stages of their applications for this tax concession, GR-18 set out the following transitional provisions:

1. Taxpayers that were already granted the tax facilities based on the old GRs can continue to use the facilities until the end of facilities period.
2. Recommendations from the Head of BKPM, which were prepared based on GR-52 and already submitted to the MoF prior to the effective date of GR-18 on 6 May 2015, will be processed based on GR-52.
3. The Head of BKPM can recommend to the MoF that eligible taxpayers with investment approval issued during the effective period of GR-52 (i.e. 22 December 2011 until 5 May 2015) be granted the tax facilities under GR-18, provided that:
    a) the investment approval has never been approved or rejected with tax facilities based on the old GRs;
    b) the business specification fulfils the requirements under each designated business sector and/or region;
    c) the company has not entered into commercial production by 6 May 2015; and
    d) the Head of BKPM's recommendation must be received by the MoF one year, at the latest, after 6 May 2015.

Several regulations from the following authorities are expected to be issued soon as the guidelines implementing this tax concession:

a) the Head of BKPM: on the application procedure;
b) the MoF: on the approval procedure, assets transfer restriction and sanction for incompliance;
c) the relevant Ministers: on the taxpayers' criteria as well as detailed requirements for each designated business sectors and/or regions as listed in the attachments of GR-18.

In the meantime, implementing regulations based on the old GRs remain valid as long as they are not contradictory to the provisions of GR-18.

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