

TaxFlash



New Tax Holiday regulation

The Minister of Finance (MoF) has finally issued a new Tax Holiday regulation through the issuance of Regulation No.159/PMK.010/2015 (PMK-159) dated 18 August 2015 which has been effective since 16 August 2015. It revokes the previous MoF regulations that regulate this tax concession.

Who is eligible?

Tax Holiday is available for new corporate taxpayers that meet the following criteria.

1. Pioneer industries

- a) upstream metal;
- b) oil refinery;
- c) base organic chemical sourced from oil and gas;
- d) machinery;
- e) telecommunication and information;
- f) sea transportation - *new*;
- g) processing industry on agriculture, forestry, and fishery products - *new*;
- h) processing industry in Special Economic Zone (*Kawasan Ekonomi Khusus/KEK*) - *new*; and/or
- i) Economic infrastructure other than those under the Government Cooperation with Business Entities (*Kerjasama Pemerintah dengan Badan Usaha/KPBU*) - *new*.

It is worth mentioning that renewable energy is no longer listed as a pioneer industry eligible for Tax Holiday;

2. New capital investment plan

The minimum legalised new capital investment plan is still Rp 1 trillion. However, it can now be reduced to Rp 500 billion for taxpayers in the telecommunication and information industries that introduce high technology;

3. *Investment commitment in the form of bank deposit*

The taxpayer must provide a commitment letter to deposit a minimum of 10% of their planned investment value in a bank/banks located in Indonesia and that the deposit shall not be withdrawn prior to the realisation of the investment plan. The minimum deposit must be settled only when approval has been granted (i.e. within seven days upon approval). Previously, the taxpayers were required to settle this deposit prior to the submission of the application;

4. *Newly established company*

The company must be established on or after 15 August 2011; and

5. *Debt to equity ratio*

There is a new criterion which requires the taxpayer to satisfy the debt to equity ratio for income tax purposes as stipulated in a separate MoF Regulation. This criterion remains uncertain in the absence of MoF regulation to date.

Other requirements

- **Tax Clearance** – Shareholders of the applicant in the form of a corporate tax resident or Permanent Establishment must now obtain a tax clearance letter issued by the Director General of Tax (DGT) unless the respective taxpayer is a state-owned enterprise or listed in the Indonesian stock exchange.
- **Tax Sparing** – PMK-159 no longer requires that the investor country or its relevant tax treaty with Indonesia has a rule regarding tax sparing.
- **Advance Pricing Agreement (APA)** – There is a new implied requirement that an export oriented applicant must file an APA request once the approval is granted (see - Additional conditions leading to tax holiday revocation).

As regulated in the previous regulation, taxpayers who have enjoyed a Tax Allowance facility cannot enjoy this Tax Holiday facility, and vice versa.

The facility

Below is a comparison of the available tax facilities under the new and the previous regulation.

Facility	Previous	New
a) Corporate Income Tax (CIT) exemption	5 - 10 years from the start of commercial production	no exemption facility
b) CIT reduction	50% of the CIT due for 2 years after the end of the CIT exemption period	<ul style="list-style-type: none">• 10% - 100% of the CIT due for 5 - 15 years from the start of commercial production• Maximum reduction of 50% for the telecommunication and information industries• The period can be extended to 20 years if it deemed necessary for the national interest

Changes in the application process

1. *One stop service*

The application process is now centralised to the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal/BKPM*). An application can no longer be made through the Minister of Industry (MoI).

2. Decision making at the MoF level

The decision will now be made at the MoF level. A consultation with the President of Indonesia is no longer required in PMK-159.

3. Reporting requirement – related party transaction

Once the application is granted, the taxpayer is required to submit periodic reports on the use of the deposited funds, investment and production realisation. The detailed procedures and timeline for this obligation will be stipulated further in a DGT Regulation.

In addition to these reports, PMK-159 also requires the taxpayer to provide its related party transaction data.

Additional conditions leading to Tax Holiday revocation

The Tax Holiday facility can be revoked if the taxpayer fails to fulfil the capital investment realisation, the 10% minimum deposit in the bank, and submitting the periodical reports.

In addition to the above conditions, PMK-159 sets out that the Tax Holiday facility can also be revoked under the following circumstances:

1. Breaching the following prohibitions:
 - a) imports or buys second-hand capital goods relocated from other countries or other companies;
 - b) conducts a main business that is not in line with the initial investment plan and not included as a pioneer industry;
 - c) transfers its assets or changes its ownership during the facility period, except if the new asset is more productive or if the shares are transferred to taxpayers having a tax clearance letter or via a listing process in a stock exchange (go public);
 - d) relocates its investment to other regions in Indonesia or to other countries within five years after the end of the Tax Holiday period; and/or
 - e) changes its bookkeeping method to shift profit/loss between the Tax Holiday period and the subsequent period, within five years after the end of the Tax Holiday period.
2. Export-oriented taxpayer that have related party transactions do not apply for an Advance Pricing Agreement (this is not included as one of the requirements to apply for a Tax Holiday, however, as failure to file for an APA request may lead to the revocation of the facility, it is implied that filing an APA request is a requirement for export oriented taxpayers); and/or
3. The taxpayer has misused the Tax Holiday facility to conduct tax avoidance or tax evasion, including through transfer pricing practice that is not in line with the arm's length principle.

Transitional provisions

PMK-159 set out the following transitional provisions:

1. Taxpayers that were already granted the tax facilities based on the old MoF regulations can continue to use the facility until the end of the facility period.
2. Proposals from the MoI or the Head of BKPM, which were prepared based on the old MoF regulations and already submitted to the MoF prior 16 August 2015, will be processed based on the old MoF regulations.

Application period

The Head of BKPM may only submit the tax facility proposals to the MoF during the period of three years after the effective date of PMK-159 (i.e. until 15 August 2018).

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