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For years there has been no specific documentation requirement but under GR 80/2007 transfer pricing documentation is mandatory.

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Relevant documents must be provided within a month of the request date.

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Taxpayers can determine how much tax they wish to pay in respect of an assessment. This must be agreed at the audit closing conference. However, taxpayers need to consider this carefully. Significant penalties can apply.

- **The DGT forgoes interest penalties**

This is applicable to revisions of annual income tax returns for years prior to 2007 filed in 2008. Individual taxpayers who voluntarily register with the DGT and obtain an NPWP in 2008 have an extra concession in respect of their annual income tax returns for any years before 2007.

- **Transitional provisions**

The standard wording of the 2007 KUP and GR 80 is unclear. However, GR 80 provides some

New tax administration regulations

The new tax administration law became effective on 1 January 2008. Please refer to our previous TaxFlash for an overview of the important points of this law. Implementing regulations have recently been introduced. This is the first in a series of TaxFlash editions commenting on the regulations as they are likely to have a significant impact on taxpayers.

Transfer pricing documentation is now mandatory

Indonesian tax legislation requires the adoption of the arm's length principle for transactions between parties having a special relationship (related parties). The actual tax law provisions on transfer pricing are limited. Meanwhile, transfer pricing cases in tax audits have been increasing in recent years. Taxpayers often find themselves in a weak position. This is mainly because the method for determining adherence to the arm's length principle and the documents required to prove it are not well regulated and taxpayers have historically not focused unduly on transfer pricing issues.

Government regulation (GR) 80/2007 requires that documentation be maintained which proves adherence to the arm's length principle. At this stage, what type of documentation is required and how to determine the arm's length nature of particular transactions is still unclear. The Minister of Finance (MoF) is to issue a regulation on this point.

Given the increasing focus on transfer pricing by the Indonesian Tax Office (ITO), taxpayers need to review the extent of their intercompany transactions and ascertain what type of documentation needs to be in place to withstand a transfer pricing audit. In the absence of any defensible position taxpayers are at risk of receiving arbitrary assessments.

Be prepared for a tax audit!

There are situations in which the timing of a tax audit can be ascertained. For example, when you claim a tax refund a tax audit must be completed within 12 month of the return filing date. In other situations, it is hard to predict when a tax audit will take place. However, one thing is now certain about a tax audit: you have to provide the relevant documents within a month of the request date. Ignoring this requirement could be detrimental. The tax auditors may calculate your tax in their own way based on whatever documents you have provided to them, if any.

In the past, documents not provided during a tax audit could generally still be submitted during the objection process. However, the 2007 tax administration law (KUP) has closed the door on such a remedy. GR 80/2007 and MoF Reg. 199/PMK.03/2007 further reaffirm this stance. Even the tax court, in these new circumstances, may be reluctant to show any mercy.

The key response to this development is to have all relevant documents ready for an audit. In general the relevant documents are the same as in the past. However, please refer to our comments above in respect of transfer pricing documentation.

How much tax should you pay?

In the past, under the pre-2007 KUP, you were required to pay the whole tax assessment within a month of the issuance date irrespective of your disagreement. Filing an objection did not defer the payment due. In extreme situations failure to pay the tax could have led the DGT to undertake a forced tax collection effort.

This is no longer the case under the 2007 KUP. You are only required to pay as much as you agreed with the tax auditors during the closing conference. If you did not agree with any of their corrections, you do not need to pay anything. This works on the assumption that you would file an objection within three months of the tax assessment date. If you do not file any objection the DGT will give you a reminder to pay the whole assessment within seven days of the deadline.

However, taxpayers need to exercise care when deciding how much to pay. This is because an unfavourable DGT decision on the objection will give rise to an administrative penalty of 50% of the underpaid tax. The penalty will grow to 100% if an appeal is lodged and the decision is not in the taxpayer's favour.

An uncertainty prevails regarding the minimum amount to be paid for filing an appeal. According to the 2007 KUP, the same rule should apply: pay only as much as you agreed in the closing conference. However, the tax court law, which governs tax appeals, demands a minimum payment of 50% of the tax due. Which rule will survive is presently unclear. However, given the uncertainty taxpayers have little choice but to pay the 50% amount to ensure their case is not thrown out on a technicality.

In the past, taxpayers used to be entitled to interest compensation on overpaid tax if the objection or the appeal ruled in their favour. This no longer seems to be the case. Although the 2007 KUP does not say anything about it, GR 80/2007 states that no interest compensation is available on overpaid tax. This may give rise to legal questions over whether the government has ruled on something beyond its authority.

The DGT forgoes interest penalties

Paying a tax liability after the due date would generally trigger an interest penalty of 2% per month. The government states in GR 80/2007 that it will forgo the interest penalty on late payments of qualifying income tax liabilities.

The concession is firstly granted to any taxpayers (corporate and individuals) who revise their pre-2007 annual tax returns in 2008. In this respect, GR 80 states that the interest penalty on the late payments of the income tax liabilities, if any, is eliminated.

Individual taxpayers who register voluntarily with the DGT office to get a Tax ID Number (NPWP) in 2008 will obtain the same concession in respect of their annual income tax filing for any years up to 2007. This is on the condition that the tax returns be filed no later than 31 March 2009.

These rules provide an opportunity for taxpayers to get their tax filings up to date without extra cost.

Transitional provisions

In the standard wording of the 2007 KUP and GR 80/2007, the tax rights and liabilities for years 2001-2007 should be determined and settled in accordance with the pre-2007 KUP, although there appears to be some ambiguity. However, GR 80/2007 states specifically that the 2007 KUP is applicable in the following cases:

- Applications for NPWP cancellation received by the DGT after 31 Dec. 2007
- Refund applications received by the DGT after 31 Dec. 2007
- Requests for the revision of an interest compensation decision issued after 31 Dec. 2007
- Time limit for the DGT to issue a revision decision ex-Art. 16 KUP for applications received by the DGT after 31 Dec. 2007
- Cancellation of tax assessments resulting from a defective tax audit performed after 31 Dec. 2007
- Objection process for objections received after 31 Dec. 2007
- Lawsuits pertaining to a tax assessment resulting from a tax audit performed after 31 Dec. 2007
- Lawsuits pertaining to a tax objection for objections filed after 31 Dec. 2007

Given the above clarification, tax administration issues for years up to 2007, other than those specified above, should clearly be dealt with in accordance with the pre-2007 KUP.

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