

TaxFlash

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A lower corporate tax rate applies for 2009 than that for 2008. You may also face a possible business decline in 2009. These may flag that you deserve a PPh 25 discount for 2009. There are some messages you need to be aware of about this matter.

Optimizing PPh 25 for 2009

Some important deadlines are looming for corporate taxpayers who wish to reduce the amount of their Article 25 instalment payments.

In particular, taxpayers seeking a reduction of instalments payable for the January to June 2009 period only have until 30 April to notify the Tax Office of that reduction.

Corporate taxpayers are familiar with the obligation to pay monthly tax instalments under Article 25 of the Indonesian Tax Law. In broad terms, Article 25 tax instalment payments are meant to be an approximation of the current

year's tax liability, and the law specifies how the instalment amount has to be calculated, by reference to actual tax paid in prior years. Importantly, Article 25 tax needs to be self-assessed by the taxpayer.

The law does provide some scope for taxpayers to vary the amount of Article 25 tax payable where there has been a decline in business circumstances and, as a result of declining profits, the payment of instalments based on prior year tax amounts would result in a tax overpayment. A reduction of Article 25 instalments normally requires the approval of the Tax Office, which in the past has proved difficult to obtain, and there has been no guarantee that the amount of any reduction sought will actually be approved.

For Article 25 instalments payable in the 2009 year, as part of its response to the global financial crisis, the Indonesian Government has provided a relaxation of the normal requirements for obtaining a reduction in Article 25 tax instalments.

For instalments payable in respect of the January to June 2009 period, the Government allows taxpayers to elect to reduce the instalment otherwise payable by up to 25%, with automatic approval ie, taxpayers can notify the Tax Office of the amount of the reduction, and this notification will not be reviewed by the Tax Office. The reduction must be based on an anticipated reduction of profits i.e. you cannot automatically get a 25% reduction unless this reflects an anticipated reduction in total tax likely to be paid in respect of the 2009 year, and the reduction notification must be made in good faith

However, there is an important deadline looming: taxpayers only have until 30 April 2009 to notify the Tax Office that they are seeking an instalment reduction under this concession. The good news, though, is that where a reduction is sought, but higher instalments have been paid in previous months, the amount of the prior months' "overpayment" can be overbooked i.e. offset against the instalment amount otherwise payable in months after the reduction notification is given.

A point to watch carefully is if the 25% reduction notification is made but the instalments paid to date are less than the monthly amount calculated using the 25% reduction. The Tax Office can then deem there to be a short payment and invoice the 2% per month late payment penalty. Care is required!

For the July to December 2009 Article 25 instalments, a different deadline is looming, in respect of the second special concession announced by the Government for calculating Article 25 instalments for the 2009 year. If taxpayers anticipate their actual 2009 income tax due will be less than 75% of the "expected income tax due" which forms the basis of the Article 25 calculation, they can apply for a reduction of the instalments otherwise payable. The Tax Office must make a decision on the application within 15 days, although approval is not automatic and the Tax Office may still carefully scrutinize requests.

In addition, it is still also possible to seek a reduction of instalments based on the "standard" rules (ie, separate from the 2009 special concessions) which require the taxpayer to demonstrate there has been a business decline.

There are many potential traps in the system and unexpected results can occur. Therefore, it is important to carefully analyse the different Article 25 options available by reference to each taxpayer's own circumstances.

There are some other pitfalls to be aware of. For example, if profits are increasing, the Tax Office requires the Article 25 instalments to be recalculated once it becomes apparent that actual tax due will be at least 50% more than the amount reflected in the instalment calculation (generally, the actual tax due from the prior year).

One unexpected outcome has emerged as a result of the corporate tax rate reduction is that in self-assessing the amount of Article 25 instalments in the 2009 year, based on the strict letter of the law, the old 30% tax rate should still be used in the calculation, even though the actual tax rate has fallen to 28% for the 2009 year. We understand the Tax Office will not be looking to reduce the rate used in calculating Article 25 instalments to 28%.

Nevertheless, the message is clear: there are opportunities to improve cash flows by seeking reductions in Article 25 instalments payable. Careful analysis is required and you need to remember these deadlines: 30 April to take advantage of the special concession for the January to June 2009 instalments, and 30 June for the July to December 2009 instalments.

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