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Uncollectible Receivables as deductible expense

Under Art.6 paragraph (1h) of Income Tax law, uncollectible receivables can be a deductible expense, where certain criteria set out in the implementing regulation have been met. The Ministry of Finance ("MoF") has recently issued MOF Reg number 105/PMK.03/2009 as the implementing regulation for uncollectible receivables. This regulation is effective as of 1 January 2009

A summary of the regulation is set out below:

Limitation

The Regulation applies to receivables arising from normal business transactions, which are uncollectible.

Criteria

The criteria for deductibility of uncollectible receivables are as follows:

- The debtor has recognised the uncollectible receivables as income in the relevant year;
- The taxpayer must submit a list of uncollectible account receivables to the Directorate General of Taxation (DGT); and
- A legal case to enforce collection has been brought to a District Court or government agency that handles state receivables; or there is written agreement on cancellation of receivables/debt release and discharge between the concerned creditor and debtor; or has been publicized in general or special publication; or the acknowledgment of debtor that his/her debts have been cancelled.

The third requirement (above) does not apply to uncollectible accounts comprising small debtors. The criteria for small debtors are:

- Receivable which is less than 100 million rupiah, which is the sum of receivables from credit syndication; or
- Receivable which is less than 5 million rupiah.

Application

The list of uncollectible receivables which is submitted to DGT as an attachment to the creditor's Corporate Income Tax Return ("CITR") must include debtor's information such as: name, tax ID, address and amount. The list must be attached with the following:

- Copy of submission collection to District Court or government agency that handles state receivables; or
- Copy of agreement on write-off of receivables or payables which has been validated by notary; or
- Copy of article in the general or special publication; or
- Letter of acknowledgment from debtor that his/her debts have been cancelled.

Promotion expenses capped for cigarette and pharmaceutical industries

Last week the Minister of Finance ("MoF") released a new regulation Reg. 104 to set maximum amounts of promotion expenses for cigarette and pharmaceutical industries that can be deducted for tax purposes. Amounts beyond the threshold are not claimable as a deductible expense. Additionally, the amount claimed must be supported by a nominative list containing detail of the parties to whom promotion-related payments have been made along with the relevant amounts. The list must be attached to the annual CITR. Failure to follow the requirements will render the promotion expenses non-deductible.

The regulation is effective from 1 January 2009 i.e. it is backdated. A summary of the changes covered by the regulation is set out below:

Maximum amounts of promotion expenses

For cigarette industry:

Turnover	Maximum amount
Up to Rp500 billion	3%, maximum Rp10 billion
Above Rp500 billion up to Rp5 trillion	2%, maximum Rp30 billion
Above Rp5 trillion	1%, maximum Rp100 billion

For the pharmaceutical industry, the maximum amount is 2% of the turnover, capped at a maximum of Rp25 billion in any one year.

Who can claim promotion expenses?

Promotion expenses can only be claimed once, by either the producer, main distributor, or the sole importer of the product in question. If promotion expenses have been shared between the producer and the main distributor, Reg. 104 rules that a deduction can only be claimed by the producer. For goods not manufactured in Indonesia, the promotion expense can only be claimed by the sole importer.

Impact

These rules will have a significant impact on the affected industries. In particular, careful analysis of what is a "promotional expense" is needed to determine the impact.

Taxpayer profitability reviews, data requests and transfer pricing audits

The Indonesian Tax Office have recently begun undertaking industry wide profitability reviews of taxpayers – and using this information to assess whether the taxpayer's profit is consistent with the profitability of other taxpayers within the same type of business (KLU).

If the results of the profitability review are inconsistent with the others in the KLU, then the ITO would typically request further information relating to the taxpayer's related party transactions and/or the functional profile of the company – with a view to proceeding to a transfer pricing focused review or tax audit.

In audits, the ITO has frequently requested documentation that supports the arm's length nature of the taxpayers transfer prices, which is required under Government Regulation GR 80/2007.

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