

TaxFlash

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Challenge to Special Purpose Company (SPC) Arrangements

The current focus of the Indonesian Tax Authorities has been directed at limiting the erosion of the Indonesian revenue base through related party structuring arrangements. It has significantly increased the disclosure requirements for related party transactions and introduced strict rules for the application of reduced withholding tax rates under Indonesia's treaty network, and recently the Minister of Finance (MoF) released Regulation No. 140/PMK.03/2010 dated 11 August 2010 regarding the use of Special Purpose Companies (SPC) formed by domestic taxpayers to purchase assets /shares of other domestic taxpayers.

The MoF regulation, (which is the implementing regulation for Article 18 paragraphs (3b) and (3e) of the 2009 Income Tax Law), confirms that if shares or assets of a domestic corporate taxpayer are purchased by a company formed by another Indonesian taxpayer specially for the purpose of acquiring those shares/assets, the purchase may be deemed as a purchase made by that other domestic taxpayer where there is a "special relationship" (according to the domestic tax law or an applicable tax treaty) between the SPC and the domestic taxpayer, and the purchase price is unreasonable/ not arm's length.

For these purposes, an SPC is further defined as a party or a body which does not have any business substance and is formed by a domestic taxpayer for the purpose of buying shares or assets owned by other domestic taxpayers.

Acquired shares or assets as intended in this regulation refer to (a) shares or assets previously owned and/or pledged by the domestic taxpayer deemed as the buyer, pursuant to a loan agreement; or (b) the assets were receivables (pursuant to a loan agreement) of the domestic taxpayer deemed as the buyer.

A Development on Land and Building Tax (*PBB*) & Duty on the Acquisition of Land and Building Right (*BPHTB*)

On 27 August 2010, MoF issued new regulations (No. PMK.147/PMK.07/2010 & PMK.148/PMK.07/2010) that certain international organisations as listed on the attachments to the regulations are exempted from PBB and BPHTB since the date of the MoF regulations.

These regulations are implementing regulations of Article 85 paragraph 4 (c) and Article 77 paragraph 3 (f) of Law No. 28/2009 regarding Regional Taxes and Retributions.

Have You Reported Your Offshore Loans ?

Bank Indonesia (BI/ the Central Bank) requires every non-financial institution, including foreign investment companies, to report its offshore loans obtained under either loan agreements, debt securities or trade payables.

There are numerous reports required at different stages of the debt life cycle, which are summarized in the following table:

Type of report	Content	Deadlines
Offshore Loan Proposal Report	Foreign loan proposal, risk management analysis, credit rating, financial ratios and report	March 10 th
Principal Loan Report	Borrower and loan profiles	10 days after signing of loan agreement or issuance of securities
Loan Realisation Report	Loan realisation and payment	10 th each month
Six Monthly Report	Financial ratios and reports	June 10 th and December 10 th

If these obligations are not met, BI may impose the following sanctions:

1. Issuance of a warning letter to the company and/or notification to the relevant government authorities for not submitting either the Offshore Loan Proposal Report or the Six Monthly Report;
2. Penalty of IDR 100,000 per day for late submission of the Principal Loan Report or the Loan Realisation Report;
3. Penalty of 1% of the offshore loan principal received for not submitting the Principal Loan Report or the Loan Realisation Report
4. Penalty of IDR 1 million for incorrect submission of either the Principal Loan Report or the Loan Realisation Report.

So, have you reported your offshore loans correctly?

For further detail, you may contact Laksmi Djuwita or Adi Pratikto.

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