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Tax Holiday Regulation

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Eid ul-Fitr's gift – Tax holiday regulation finally released!

Finally, a couple of days ago the Minister of Finance (MoF) released Regulation No.130/PMK.011/2011 (PMK-130) dated 15 August 2011 regarding the much talked about Corporate Income Tax (CIT) Holiday.

Under Government Regulation (GR) No.94/2010 (GR-94), it is stated that the government will provide tax facilities in the form of CIT exemptions (tax holiday) or reductions to companies in pioneer industries with reference to Article 18(5) of Investment Law No.25/2007 (Law-25). PMK-130 is the implementing regulation of this tax facility provision.

Who is eligible?

The taxpayers that may enjoy the tax facilities shall be new corporate taxpayers that meet the following criteria:

- a) pioneer industries in the following sectors: 1) base metal; 2) oil refinery and/or base organic chemical sourced from oil and gas; 3) machinery; 4) renewable energy; and 5) telecommunication equipment;
- b) have a legalised new capital investment plan of a minimum of Rp 1 trillion (approximately USD119 million);
- c) deposit a minimum of 10% of their planned investment value in a bank/banks located in Indonesia and the deposit shall not be withdrawn prior to the realisation of the investment plan; and
- d) have a status of Indonesian legal entities that is legalised at the soonest 12 months prior to the enactment of PMK-130.

The MoF may determine pioneer industries other than those stated above based on considerations of maintaining the competitiveness of national industries and strategic value of certain business activities.

What are the tax facilities?

Eligible taxpayers may be granted the following tax facilities:

- a) CIT exemption for the period of five to ten years from the start of commercial production.
- b) 50% reduction of the CIT due for the period of two years after the end of the CIT exemption period.

Notwithstanding the above, the MoF may grant the tax facilities for a period longer than the determined timeline based on similar considerations to those for determining pioneer industries.

The taxpayers granted the tax facilities must fully realise their investment plans and have entered into commercial production to enjoy the tax facilities. The start of commercial production will be determined further by a Directorate General of Taxes (DGT) Regulation.

How to get and maintain the tax facilities?

- a) An eligible taxpayer should submit an application to the Minister of Industry (MoI) or Head of the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal/BKPM*).
- b) MoI and Head of BKPM will make a proposal to the MoF after carrying out research on the applicant.
- c) MoF is the authorised government official to issue a decision on the tax facility application. In this regard, MoF will form a verification committee to provide research assistance and recommendations to the MoF, and MoF will consult with the President of Indonesia prior to the finalisation of the decision.
- d) MoF will issue a Decree regarding the granting of tax facilities if the application is approved or provide a written notification to the taxpayer if the application is rejected.
- e) Once the application is granted, the DGT and verification committee will closely monitor the taxpayer's business activities by requiring the taxpayer to submit periodic reports on the realisation of its investment plan and the use of the funds deposited in a bank/banks located in Indonesia. Detailed procedures for periodic reporting will be stipulated further in a DGT Regulation.
- f) Failure to maintain the required criteria, realise the investment plan and to submit the above periodic reports will cause in a termination of the tax facilities.

It is worth mentioning that the tax holiday proposal to the MoF as mentioned in point b) above requires information whether the investor country has a rule regarding tax sparing. This seems to imply that if there is no tax sparing rule in the investor country (or the relevant tax treaty with Indonesia does not provide a tax sparing facility), the tax holiday may not be granted. Foreign investors interested in utilising this tax incentive should take this matter into account when structuring their investment into Indonesia.

When should taxpayers apply?

The MoI or Head of BKPM may only submit the tax facility proposals during the period of three years after the enactment of PMK-130 on 15 August 2011. Interested investors should consider this timeline.

Comments

The release of these tax facilities based on Law-25 completes the income tax facilities and incentives provided by the Government of Indonesia. To date, the government has provided a package of concessions available for companies that invest in certain qualifying business sectors and/or regions based on Article 31A of Income Tax Law No.36/2008 (Law-36), which has been further regulated by GR No.1/2007 and amended lastly by GR No.62/2008.

Taxpayers who have enjoyed a tax facility under Article 31A of Law-36 cannot enjoy the facility under PMK-130, and vice versa. This treatment is in line with Article 29 of GR-94, which states that the facilities under this GR will be given to business sectors not receiving tax facilities under Article 31A of Law-36.

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