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More guidance on Tax Holiday

In our TaxFlash No.09/2011, we summarised Minister of Finance (MoF) Regulation No.130/PMK.011/2011 (PMK-130) regarding Corporate Income Tax (CIT) Exemption or Deduction Facility (Tax Holiday). According to Article 4 of PMK-130, the detailed guidelines to apply for this tax facility will be regulated further by the heads of two designated government bodies, i.e. the Chairman of the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal/BKPM*) and the Minister of Industry (MoI).

Last week, the long awaited implementing regulations were released with the date of signing on 30 November 2011 and came into effect on 1 December 2011. The Chairman of the BKPM issued Regulation No.12/2011 (BKPM-12) while the MoI issued Regulation No.93/M-IND/PER/11/2011 (PMP-93).

As mentioned in PMK-130, investors interested in utilising this tax facility can choose to submit the application either to the Chairman of the BKPM or to the MoI. The standard application form is provided in both of the regulations and should be completed with the required attachments.

Once the complete application is accepted, the verification and assessment process will be conducted by a verification team formed by the Chairman of the BKPM or the MoI. The verification and assessment process conducted under the supervision of Chairman of the BKPM and MoI may be slightly different. However, the total timeline up to the decision stage between those two approaches will be similar, i.e. 14 working days. The detailed application processes to both the BKPM and MoI are attached with this publication.

Subsequent to the granting of Tax Holiday to the taxpayer based on a MoF Decision, the verification team in BKPM or each relevant Directorate General

under the MoI for the specific industry in which the taxpayer is grouped will conduct routine evaluation during the Tax Holiday period in order to measure the effectiveness of the policy.

The taxpayer granted the Tax Holiday facility must submit a semi-annual report to the Chairman of the BKPM or to the relevant Directorate General covering the following matters:

- a) realisation of commercial production;
- b) utilisation of Tax Holiday;
- c) realisation of manpower employment; and
- d) realisation of technology use and transfer.

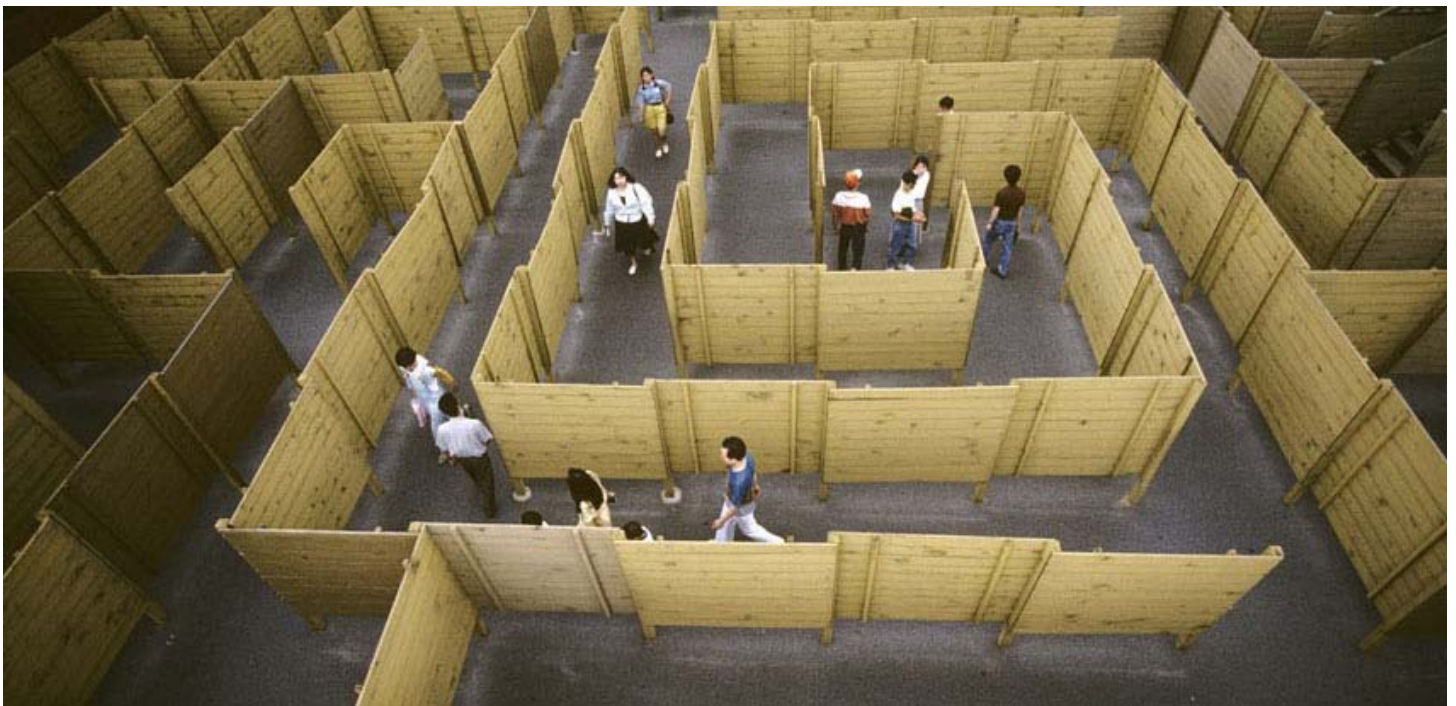
The evaluation result taking into account the report provided by the taxpayer will be submitted to the Chairman of the BKPM or the MoI on an annual basis.

Comments:

It should be noted that the above semi-annual report stipulated in BKPM-12 and PMP-93 is different from the periodic report stipulated in PMK-130. The periodic report based on PMK-130 should cover update on the realisation of investment plan and the use of funds deposited in a bank/banks located in Indonesia. Failure to submit the periodic report will become one basis for the MoF to terminate the tax facility. Detailed procedures for this periodic reporting will be stipulated further in a Director General of Taxes Regulation.







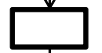







Notwithstanding the above, there is no provision in BKPM-12 or PMP-93 that determines a sanction for the taxpayer that fails to satisfy the semi-annual reporting requirement. This may imply that there will be no sanction applied if the taxpayers do not submit the semi-annual report.

Furthermore, it is worth mentioning that the Chairman of the BKPM and the MoI will be in coordination during the verification process, either for applications submitted to the Chairman of the BKPM or to the MoI. In this regard, the Chairman of the BKPM and the MoI will have the same perspective in deciding an application, as to whether to approve and provide a recommendation to the MoF or to refuse the application.



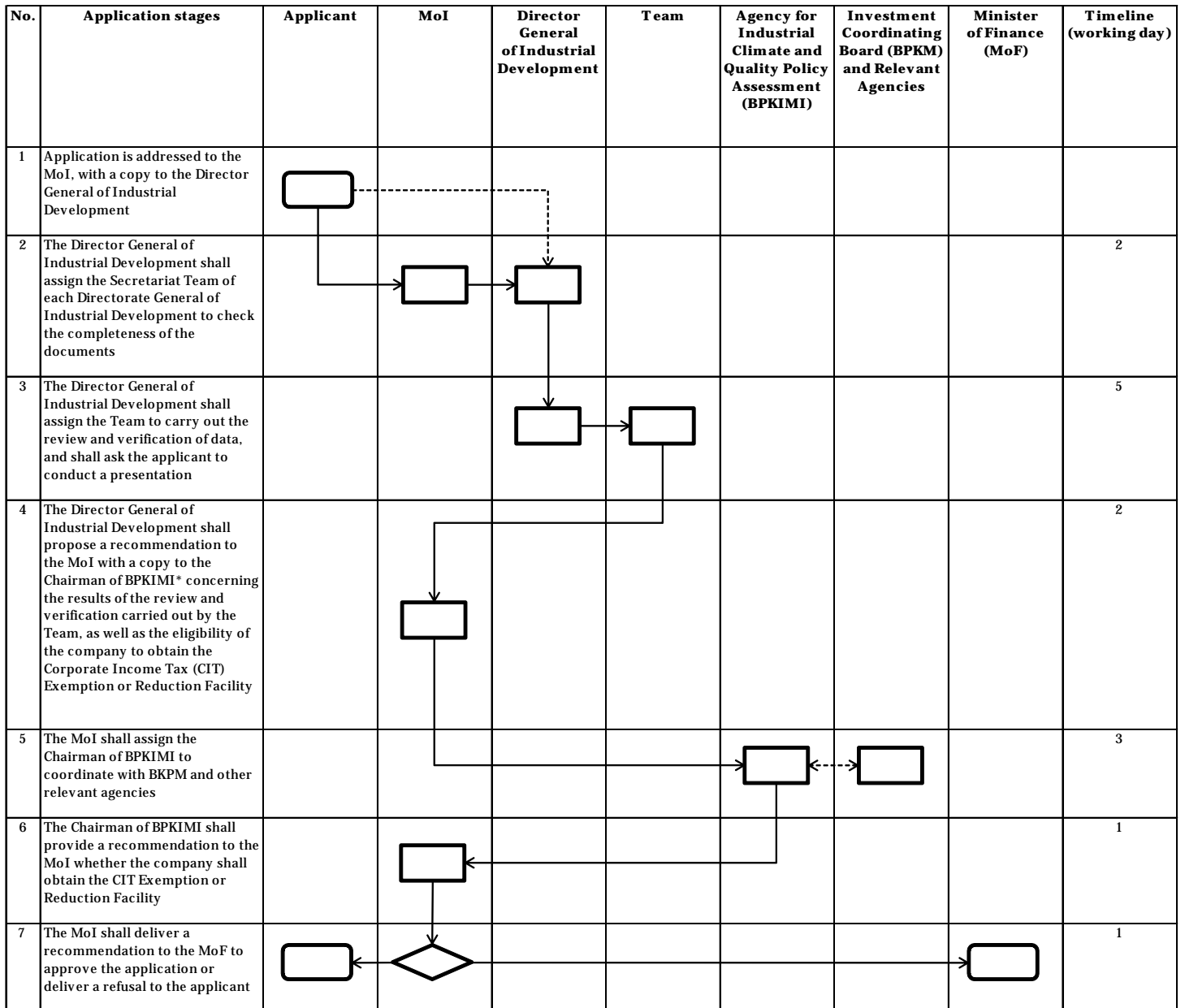
Appendix 1

Application procedure through the Chairman of the Investment Coordinating Board (BKPM)

No.	Application stages	Applicant	Chairman of the BKPM	Deputy Chairman for Investment Service	Team	Relevant Agencies	Minister of Finance (MoF)	Timeline (working day)
1	Application for the facility is received by One-Stop Integrated Service (PTSP) BKPM and addressed to the Chairman of the BKPM							1
2	If within two days the Chairman of the BKPM is unable to attend, the Deputy Chairman for Investment Service of the BKPM shall take the initiative to initiate the review and verification							2
3	The designated team shall carry out the initial review and verification of data, and shall ask the applicant to conduct a presentation							1
4	The applicant shall conduct a presentation and the Team shall conduct review on the presentation							5
5	The Team shall prepare description of its research and submit the results of its review and verification to the Deputy Chairman for Investment Service							3
6	The Deputy Chairman for Investment Service shall provide the results of its review and verification to the Chairman of the BKPM. If it is approved, the Deputy Chairman for Investment Service shall prepare a recommendation to the Chairman of the BKPM to the MoF. If it is refused, the Deputy Chairman for Investment Service shall make a written refusal to the applicant							2

Appendix 2

Application procedure through the Minister of Industry (MoI)



*) BPKIMI: *Badan Pengkajian Kebijakan Iklim dan Mutu Industri* (the Agency for Industrial Climate and Quality Policy Assessment) is a supporting element being under and responsible to the MoI which has a duty to conduct investigations and assessments as well as the preparation of the plan for medium-term and long-term industrial development macro-policy, priority industry cluster development policy as well as industrial climate and quality

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