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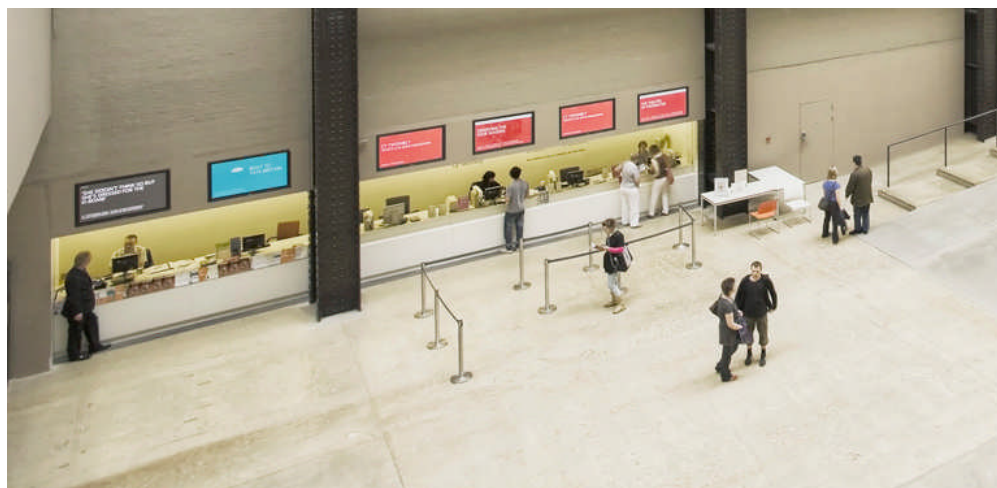
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What's changing in the new implementing regulation to the General Tax Provisions Law?

The Government issued Regulation No.80/2007 (GR-80) in 2007 as an implementing regulation to Law No.28/2007 (Law-28) regarding General Tax Provisions (*Ketentuan Umum dan Tata Cara Perpajakan/KUP*), which was amended in 2009 through the issue of Law No.16/2009. In order to address several unclear provisions under GR-80 and to update the transitional provisions, the Government has issued Regulation No.74/2011 (GR-74) as the new main implementing regulation of the KUP Law, revoking GR-80.

GR-74 was dated 29 December 2011 and came into effect on 1 January 2012. Both GR-74 and GR-80 divide the provisions into 12 chapters. However, GR-74 has 67 articles, adding 30 new articles to GR-80. We noted that some of the additional articles are copied from the new KUP Law or other lesser-ranked implementing regulations which had been previously issued (e.g. Minister of Finance regulations regarding audits for preliminary evidence and the reduction or cancellation of tax administrative sanctions).

Several of the important rules covered by GR-74 and the main changes from GR-80 are set out below.

Verification procedures

‘Verification’ was the term used for tax audit in the early nineties. Verification was later defined as a simple tax audit in the KUP Law of 1994 and 2000, to differentiate it from the more formal and standardised tax audit. The term ‘simple tax audit’ was then completely removed from the KUP Law during the enactment of Law-28 in 2007.

In GR-74, the term ‘verification’ is reintroduced and defined as a series of activities to test the fulfillment of subjective and objective obligations or tax calculations and payments, based on the taxpayer’s application or data and tax information which either belongs to or is obtained by the Director General of Taxes (DGT), in order to issue tax assessment letters, to issue or cancel a Tax ID Number, and/or to affirm or revoke Value Added Tax (VAT)-able Entrepreneur status.

As defined above, verification may be conducted on “other information” which either belongs to or is obtained by the DGT, as follows:

- a. clarification results/confirmation of VAT invoices;
- b. withholding tax slips;
- c. taxation data relating to taxpayers not submitting tax returns on time, having received a written reminder and still not submitting a tax return within the period specified in the Warning Letter; or
- d. transaction evidence or taxation data that can be used to calculate the taxpayer’s obligation.

Detailed verification procedures will be set out in a future Minister of Finance Regulation.

Mutual Agreement Procedure (MAP)

The DGT issued Regulation No.48/PJ/2010 (PER-48) in 2010 regarding MAP. A MAP can be applied for to reach mutual agreement to resolve tax disputes regarding cross-border related party transactions. The main issue from PER-48 that relates to the tax administrative procedures is the limitation on taxpayers choosing between applying for an MAP or continuing the dispute resolution process through a tax objection or appeal in Indonesia. Both processes cannot be carried out simultaneously.

GR-74 provides flexibility for taxpayers to apply for a MAP and to continue local dispute resolution at the same time. The local dispute resolution includes applying for a tax objection, appealing to the Tax Court and requesting for a reduction or cancellation of administrative sanctions. However, GR-74 includes the restriction that a MAP application shall be discontinued if an appeal decision is declared by the Tax Court prior to the finalisation of the MAP. If one of the parties is not satisfied with the Tax Court decision, a judicial review by the Supreme Court is still allowed.

Advance Pricing Agreement (APA)

In our TaxFlash No.01/2011, we explained in detail about APA, based on DGT Regulation No.69/PJ/2010. GR-74 stipulates that any documents used during the negotiation of an APA should be returned to the taxpayer if no agreement is reached and the documents cannot be used by the Indonesian Tax Office (ITO) as the basis to conduct a tax audit or audit for preliminary evidence.

Ex-officio assessments

Corporate taxpayers now can be issued with an *ex-officio* assessment if the taxpayer does not meet the following obligations during a tax audit:

- a. showing and/or lending books or records, documents becoming the basis, and other documents related to the taxable income;
 - b. providing opportunity for entering places or rooms deemed necessary and providing assistance to ensure the execution of an audit; and/or
 - c. providing other required information;
- which results in the taxable income not being able to be calculated correctly based on the prevailing regulations.

Should this be the case, the ITO must notify and invite the taxpayer to attend a closing conference. During the closing conference, the taxpayer still has an opportunity to submit documents to be considered by the ITO, limited to those documents relevant to the calculation of gross revenue and withholding tax slips relating to tax credits claimed.

GR-80 previously stipulated that taxpayers who cannot meet their obligations during a tax audit would be subject to an audit for preliminary evidence, instead of an *ex-officio* assessment.

Interest compensation

GR-74 stipulates the tax overpayment conditions in which interest compensation cannot be granted, as follow:

- a. overpayments attributable to decisions on objections, decisions on appeal or decisions on judicial reviews of underpaid tax assessments or additional underpaid tax assessments approved in the audit closing conference or verification result and already paid before submitting an objection; or
- b. overpayments attributable to decisions on objections, decisions on appeal or decisions on judicial reviews of the amount of tax stipulated in an underpaid tax assessment or additional underpaid tax assessment not approved in the audit closing conference or verification result, but paid before the submission of an objection, application for appeal, or application for judicial review or before the issue of a decision on objection, decision on appeal or decision on judicial review.

GR-74 strengthens the limitations on the granting of interest compensation to taxpayers compared to the provisions of GR-80, for example a taxpayer would no longer be granted interest compensation on an overpayment attributable to a decision on objection, decision on appeal or decision on judicial review, although the taxpayer only agreed with part of the underpaid tax assessment or additional underpaid tax assessment.

More taxpayers can maintain bookkeeping in English and USD currency

On 2 February 2012, the MoF signed Regulation No.24/PMK.011/2012 (PMK-24) and released it a few days ago. PMK-24 amends MoF Regulation No.196/PMK.03/2007 (PMK-196) regarding Procedures for Performing Bookkeeping Using Foreign Language and Currency other than *Rupiah* as well as the Obligation to Submit Annual Income Tax Returns of Corporate Taxpayers.

Key changes stipulated in PMK-24 is addition to the list of taxpayers eligible to maintain bookkeeping in English and USD currency, i.e., taxpayers presenting their financial statements in their functional currency of USD in accordance with the Financial Accounting Standards (*Standar Akuntansi Keuangan/SAK*) applicable in Indonesia. This resolves previous concerns in cases where a company with USD as its functional currency and thus required to maintain bookkeeping in USD from 2012 for accounting purposes (that is not included in the list of eligible taxpayers under PMK-196), would still need to present its fiscal bookkeeping in *Rupiah* as PMK-196 did not accommodate this.

PMK-24 also stipulates that the newly eligible taxpayers whose bookkeeping year starts in January, February, March or April 2012, must apply for approval to maintain fiscal bookkeeping in USD currency within 30 days of the enactment of the regulation (i.e., 2 February 2012). There is an ambiguity on whether the 30 days means 30 calendar days or 30 working days. Some verbal confirmations from the officials of the Directorate General of Taxes and the Ministry of Finance indicate that it should be 30 working days. Nevertheless, considering these are verbal confirmations only, it is prudent to lodge the complete application by 1 March 2012. Standard application forms and list of documents required to be submitted along with the application are provided in DGT Regulation No.PER-11/PJ/2010.

Remaining issue may still prevail for companies whose functional currency is neither *Rupiah* nor USD as the article in PMK-24 only covers the use of English and USD currency.

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