Tax Indonesia
TaxFlash
No.09/2012

pwc

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More clarity with regard to investment incentives

Companies investing in particular sectors and/or regions with a high priority on the national scale may be granted the following tax facilities:

a) A reduction in net taxable income of up to 30% of the amount invested, prorated at 5% for six years of commercial production, provided that the assets invested are not transferred out within six years;
b) Acceleration of fiscal depreciation deductions;
c) Extension of tax-loss carry forwards for up to ten years;
d) A reduction of the withholding tax rate on dividends paid to non-residents to 10% or the applicable reduced tax treaty rate.

This set of tax facilities is provided based on Article 31A of the Income Tax Law and were implemented through Government Regulation (GR) No.1/2007 as lastly amended by GR No.52/2011 (GR-52) in December 2011 (discussed in our TaxFlash No.01/2012). GR-52 includes the following new provisions:

a) Provides opportunity for taxpayers that have obtained investment approval prior to the enactment of GR-52 to enjoy the tax facilities if they meet the following criteria:
   - have a new investment plan of a minimum of Rp 1 trillion (approximately USD119 million); and
   - have not entered into commercial production by the date of effect of GR-52.
b) Stipulates that the tax facilities can only be utilised after the taxpayers have realised at least 80% of their investment plan.

GR-52 also covers 129 eligible types of investment (based on Business Classification Fields/*KBLI*), which include 52 types of investment in particular sectors, and 77 types of investment in particular sectors and also in particular regions. The details are available on request, from your usual PwC Indonesia contact.

In order to provide more clarity and detailed procedures in applying for these tax facilities, the Minister of Finance (MoF) issued Regulation No.144/PMK.011/2012 (PMK-144) on 3 September 2012. PMK-144 revokes the previous MoF Regulation No.16/PMK.03/2007.

PMK-144 confirms that the tax facilities will be provided for investment in the form of tangible fixed assets, including land used for conducting the business.
Interested investors should consider the below timeline in applying for the tax facilities:

a) during the period of one year after the date of investment approval which is issued after the enactment of PMK-144;
b) during the period of one year after the enactment of PMK-144 (up to 3 September 2013) for investment approval issued after the enactment of GR-52 up to the enactment of PMK-144; or
c) during the period of one year after the enactment of PMK-144 (up to 3 September 2013) for investment approval issued prior to the enactment of GR-52.

Approval for the facilities is issued by the Director General of Tax (DGT) on behalf of the MoF and based on recommendation from the Chairman of the Investment Coordinating Board (*BKPM*). The DGT shall issue the decision to approve or reject the application by the tenth working day after the recommendation from the Chairman of BKPM has been received completely.

The tax facilities can be used in the tax year when the taxpayer has realised at least 80% of their investment plan and after a decision letter on the realisation is issued by the DGT. The decision letter can only be issued after the DGT has performed a field audit.

After the tax facilities are granted, the eligible taxpayers shall submit the following regular reports:

a) investment realisation;
b) production realisation;
c) details of fixed assets used for non-facilities activities;
d) details regarding transfer of fixed assets which are the subject of the facilities;
e) details of fixed assets replacement;

All the reports should be submitted to the DGT by the tenth working day of the month following the end of the relevant semester. The investment realisation report should be regularly submitted during the whole investment period while the other reports should be regularly submitted for six years from the determination of investment realisation.

In addition to regular reporting, taxpayers that have obtained facility approval must maintain separate records for assets receiving the facilities and for assets that are not, and enclose audited financial statements when submitting their corporate income tax return.

PMK-144 provides detail examples in calculating the tax facilities while detailed procedures regarding the determination of investment realisation, regular reporting and tax facility revocation will be stipulated further in a DGT Regulation.

Bank Indonesia regulation regarding foreign exchange

On 28 August 2012, the Central Bank (*Bank Indonesia/BI*) issued Regulation No.14/11/PBI/2012 (PBI-14) as an amendment to the previous Regulation No.13/20/PBI/2011 (PBI-13) regarding the receipt of Foreign Exchange from Export Proceeds (*Penarikan Devisa Hasil Ekspor/DHE*) and Withdrawal of Foreign Exchange from Foreign Debt (*Penarikan Devisa Utang Luar Negeri/DULN*).

Receipt of foreign exchange from export proceeds

PBI-13 and PBI-14 stipulate that export proceeds must be received through a foreign exchange bank. A foreign exchange bank is a bank which receives approval from BI to perform banking business in foreign exchange, including branches of foreign banks in Indonesia, but not included overseas branches of banks with headquarters in Indonesia. The receipt of the export proceeds should be done a maximum of 90 days after the issue of export declaration (*Pemberitahuan Ekspor Barang/PEB*).

For payment through a Letter of Credit, consignation, collection, etc, for which the payment due date is more than or at least 90 days after the PEB date, the export proceeds must be received a maximum of 14 days after the relevant payment due date. For these payments, the exporter will have to submit a written notification attached with its supporting documents. Failure to submit such a written notification within 14 days will cause the exporter to be regarded to have received the payment within 90 days.

Once the exporter has received the export proceeds, they must inform their foreign exchange bank of the following information within a maximum of three days:

a) Registration number of the PEB
b) Date of PEB
c) Code of the relevant customs office
d) Exporter Tax Identification Number (*NPWP*)

The above information will then be provided to BI by the foreign exchange bank.

The amount of export proceeds received should match the PEB value. If the value is not the same as the PEB value or is smaller than the PEB value, the exporter will have to submit a written notification and its required supporting documents. The written notification should be submitted to BI at the latest on the fifth day of the following month after the payment has been received. If the exporter does not submit the written notification, the payment received will be treated as not the same as the PEB and the exporter will be treated as not having the export proceeds received through the foreign exchange bank.

If an exporter cannot receive the export proceeds, or can still receive them but in a smaller amount than the PEB value because of bankruptcy, force majeure, etc, the exporter will still have to submit written notification and supporting documents by a maximum of 90 days after the PEB date.

BI will check the exporter's compliance with the receipt of export proceeds through the documentation. Those who violate the regulation will have an administrative sanction imposed of 0.5% of the export proceeds that have not been received by the foreign exchange bank with a minimum amount of IDR 10 million and a maximum amount of IDR 100 million.

The sanction is imposed in IDR and the mid rate of BI on the date of imposition of the sanction used. This sanction will be valid from 2 July 2012.

If the exporter does not pay the administrative sanction and/or fails to comply with the requirements, their export activities will be suspended according to customs law and the relevant regulations.

The regulation is valid from 2 January 2012. For export proceeds which are contracted before this regulation was issued, it is not obligatory to be received through a foreign exchange bank until 31 December 2012. For export proceeds which originated from PEB issued in 2012, the obligation to receive the export proceeds through the foreign exchange bank falls due at the latest of the end of the sixth month after the PEB date.

The receipt of export proceeds originated from netting result of an exporter receivables with the exporter obligations can be done only up to 31 December 2012 and should be completed with supporting documents.

Withdrawal of foreign exchange from foreign debt

Foreign exchange from foreign debts must be withdrawn through a foreign exchange bank. The requirement applies for foreign exchange from foreign debt in cash funds, originating from a non-revolving loan agreement not used for refinancing; the difference between a refinancing facility and its previous foreign debts; and foreign debts based on debt securities in the forms of Bonds, Medium Term Notes (MTN), Floating Rate Notes (FRN), Promissory Notes (PN) and Commercial Paper (CP).

The accumulated value of the foreign debt withdrawn must be the same as the commitment value. If there are any differences or the amount is smaller than the commitment value, the debtors must submit a written notification to BI. The withdrawal of foreign exchange from foreign debt must be reported to BI.

BI will check the debtor's compliance with the withdrawal of foreign exchange from foreign debt through the documentation. Those who violate the regulation will have an administrative sanction imposed of IDR 10 million on each withdrawal of foreign exchange. This sanction will be valid from 2 July 2012.

Withdrawals of foreign exchange which are contracted before the validity of this regulation will not have to be received in a foreign exchange bank.

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