

TaxFlash



Amendments to tax audit procedures regulations

Following several new Ministry of Finance (MoF) regulations (*PMK*) relating to general tax provisions which we have covered in our Tax Flash No.04/2013, the government has issued two more PMKs with regard to tax audit procedures.

1. General Tax Audit Procedures

MoF Regulation No.17/PMK.03/2013 (PMK-17) is dated 7 January 2013 and has been effective since 1 February 2013. This regulation revokes several MoF regulations relating to tax audit procedures, i.e. Regulation No.191/PMK.03/2007, Regulation No.198/PMK.03/2007, Regulation No.199/PMK.03/2007 (PMK-199) and Regulation No.82/PMK.03/2011.

Highlights:

- a) PMK-17 is applicable to all ongoing tax audits, including those based on instruction letters (*SP2*) issued before the issuance of PMK-17.
- b) This regulation provides the following additional criteria for tax audit targets:
 - Taxpayers which have changed their fiscal year or bookkeeping method or performed fixed assets revaluation.
 - Taxpayers which have not submitted their income tax return or submitted it after the deadline stated in a warning letter, which have been selected to be audited based on a risk analysis.
- c) Regarding the audit timeline, PMK-17 now splits it into the examination phase (from the issuance of SP2 up to the issuance of preliminary tax audit findings notification (*SPHP*)) and the discussion phase (from the issuance of a preliminary tax audit findings notification (*SPHP*) up to the finalization of the tax audit result report (*LHP*)). The main spirit of this change is to give more time to the discussion phase.

Changes in the timeline of a tax audit are as follows:

New	Old
Field audit	
Examination phase should be done within six months and can be extended for two more months	Tax audit process from the issuance of SP2 up to the finalization of LHP should be done within four months and can be extended for another four months
Discussion phase should be done within two months	
Office audit	
Examination phase should be done within four months and can be extended for two more months	Tax audit process from the issuance of SP2 up to finalization of LHP should be done within three months and can be extended for another three months
Discussion phase should be done within two months	
Further extension for certain taxpayers	
In addition to taxpayers with transfer pricing issues or financial engineering, PMK-17 also adds group of companies and Oil and Gas Production Sharing Contractors	Only taxpayers with transfer pricing issues or financial engineering

New	Old
Extension can be made three times for six months each	Extension can be made five times within two years

- d) Previously, although the General Tax Provision Law (*KUP Law*) stipulates that an Additional Tax Assessment (*SKPKBT*) can be issued after a re-audit is conducted only if there is new data, PMK-199 stated that a re-audit can also be conducted based on a Director General of Tax (DGT) consideration, i.e. there is a discretionary element. Now, PMK-17 reinstates that a re-audit can be conducted only if there is a new data, including data not previously disclosed.
- e) In tax audits, tax auditors must determine whether they have sufficient competent data to calculate taxable income and if the data is insufficient, a DGT ex-officio assessment maybe issued. In the past, such a DGT ex-officio assessment may only be issued to individual taxpayers, whereas for corporate taxpayers, the tax auditors must propose to continue the process with a tax audit on preliminary evidence of a tax crime.

2. Procedures of tax audit on preliminary evidence of a tax crime

MoF Regulation No.18/PMK.03/2013 (PMK-18) regarding procedures of tax audit on preliminary evidence of a tax crime is dated 7 January 2013 and has been effective since 1 February 2013. This regulation revokes MoF Regulation No.202/PMK.03/2007 (PMK-202) regarding the same issue.

Highlights:

- a) In the past, the conducting of a tax audit on preliminary evidence must be informed in writing to the taxpayer prior to the commencement of the audit (an open audit). PMK-18 now allows the DGT to conduct a closed audit whereby the taxpayer is not informed of the occurrence of such a tax audit.
- b) A tax audit on preliminary evidence must be conducted openly if the preliminary evidence is related to:
 - A refund request in relation to Art. 17B of the KUP Law.
 - A continuation of a tax audit to examine the taxpayer's compliance which raises an indication of a tax crime.

- c) A tax audit on preliminary evidence must be finished within six months (and can be extended) from the date of notification to the taxpayer (for open audits) or from the issuance of a tax audit instruction letter to the tax auditor (for closed audits). In PMK-202, the timeline was within four months from the notification to the taxpayer.
- d) In conducting a closed audit, the tax auditor is entitled to:
- Perform tax audit techniques as needed to obtain related documents, including observation, surveillance, undercover, or other intelligence activities.
 - Discreetly request an explanation and/or evidence from relevant third parties (either verbally or in writing).
 - Perform any other necessary actions to conduct a closed audit.
- e) PMK-18 also provides guidelines in the case a taxpayer that is subject to a closed tax audit on preliminary evidence is concurrently facing a general tax audit, a verification or has submitted a revised annual income tax return.

- d. emplacement areas
e. safety areas

2) offshore areas

- Body of earth under the land surface utilised for exploration or production

B. Building: technical constructions planted permanently on land and/or in water

Tax Base

The PBB rate is specified at 0.5%. The actual tax due on a particular object is calculated by applying the tax rate to the taxable sale value (*Nilai Jual Kena Pajak/NJKP*) of the object. NJKP is a predetermined proportion of the sale value of the tax object (*Nilai Jual Objek Pajak/NJOP*) of a particular land and building. NJKP is currently stipulated to be either 20% (for NJOP up to Rp. 1 billion) or 40% (for NJOP above Rp. 1 billion).

NJOPs are to be determined by the DGT on behalf of the MoF and may be updated depending on the economic development of the region in question. In accordance with MoF guidelines, NJOPs should take into account the market value of the land and buildings in the region. Current NJOPs of land and building are regulated in MoF Regulation No.150/PMK.03/2010 (PMK-150).

Where a piece of land and building is used for business purposes in the areas of plantation, forestry, fishery, mining, or oil and gas, the NJOP should also take into account the investment standard applicable on these. In regard to the mining industry, the investment standard is based on net income of mining production (i.e., gross income deducted by production costs).

PER-32 determines that the sales price of mining products used in calculating gross income should result from the average standard price of metal minerals, non-metal minerals, rocks or coal. If no standard price is available, the sales price will be determined based on prices of those products incurred in last year (i.e., the agreed price between the seller and buyer). Sales price in USD currency must be converted into Rupiah using the tax exchange rate applicable on the first of January of every fiscal year.

PER-32 also determines that mining production costs should comprise direct costs for: a) soil stripping; b) excavation of mining products; c) processing or refinery of mining products; and/or d) transportation of mining products.

Land and Building Tax for the mining industry

The DGT has issued Regulation No.PER-32/PJ/2012 (*PER-32*) regarding Land and Building Tax (*Pajak Bumi dan Bangunan/PBB*) for the mining industry. PER-32 revokes provisions regarding PBB for the mining industry which was previously regulated in DGT Decision No.KEP-16/PJ.6/1998. PER-32 is dated and has been effective since 28 December 2012.

Tax Objects

The PBB objects in the mining industry cover land and/or buildings located in mining areas, including locations in the mining license area and locations outside the mining license area which are used for mining activities. A list of PBB objects for mining industry is provided below.

A. Land:

- Land surface used for exploration or production, including:
 - 1) onshore areas
 - a. productive areas
 - b. not yet productive areas (i.e., production reserve area and not yet utilised area)
 - c. non-productive areas

The mining investment standard is only applicable to calculate the NJOP of the productive area. Detailed explanation regarding the sales price of mining

products and scope of each type production costs are stipulated in PER-32.

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