# TaxFlash

## *Tax holiday: no new regulation yet!*

The Minister of Finance (MoF) Regulation No.130/PMK.011/2011 (PMK-130) stipulates that the tax holiday applications may only be submitted to the MoF up to three years after its enactment, i.e. by 15 August 2014.

Despite several publications highlighting statements from high-ranking government officials (e.g. the MoF, the Minister of Industry and the Head of Investment Coordinating Board) that the government will extend the tax holiday application as well as providing a relaxation on the application requirements, the MoF has yet to issue a new regulation to extend the application timeline. Should this MoF Regulation be issued, it may be applicable retroactively to cover the period since 15 August 2014.

Corporate Income Tax (CIT) holiday in Indonesia is given to companies in pioneer industries in the following forms:

1. CIT exemption for the period of five to ten years from the start of commercial production.
2. 50% reduction of the CIT due for the period of two years after the end of the CIT exemption period.

## *New Value Added Tax treatment on agricultural products*

On 25 February 2014, the Supreme Court grant judicial review requests to revoke several articles in two Government Regulations (GRs) regarding Value Added Tax (VAT), which were filed by the Indonesian Chamber of Commerce and Industry (*Kamar Dagang dan Industri Indonesia/KADIN*). Hence, those Articles were deemed not legal and not binding on the public. The effective date of the Decisions is 22 July 2014. The details of these Decisions are as follows:

## 1. Supreme Court Decision No.64/P/HUM/2013 (PUT-64)

This Decision grants the judicial review request to revoke Articles 5(2), 5(3), 5(4) and 19(2) of GR No.1/2012 (GR-1) concerning VAT treatment on the own use of VAT-able goods. In the absence of a revised GR or other implementing regulation, the matters regulated under those Articles should be referred back to the VAT Law.

The definition of 'own use' of VAT-able goods has been stipulated in the Elucidation of Article 1A(1)(d) of the VAT Law as the use for the interest of the entrepreneur, management or employees, regardless of whether the VAT-able goods are produced by themselves or not.

## 2. Supreme Court Decision No.70/P/HUM/2013 (PUT-70)

This Decision grants the judicial review request to revoke Articles 1(1)(c), 1(2)(a), 2(1)(f), and 2(2)(c) of GR No.31/2007 (GR-31) concerning the VAT exemption facility for agricultural products (including plantation and forestry products) as strategic goods.

The Director General of Tax (DGT) issued Circular Letter No.SE-24/PJ/2014 (SE-24) on 25 July 2014 to implement PUT-70 and to inform all tax officers under the DGT as well as taxpayers about PUT-70 and its tax implications, especially those in the field of agriculture, plantation and forestry.

SE-24 stipulates the tax implications resulting from PUT-70 to be as follows:

- Agricultural products which are listed in GR-31 and also specifically mentioned in the Elucidation of Article 4A(2)(b) of the VAT Law as non-VAT-able are still treated as non-VAT-able (i.e. fresh fruits and vegetables).
- Other agricultural products that are only mentioned in the Elucidation of Article 4A(2)(b) of the VAT Law but not specified in GR-31 are non-VAT-able (i.e. rice, grain, corn, sago and soybeans).
- Plantation products, ornamental plants, herbal plants, food-crop and forestry products which are listed in GR-31 are now VAT-able (previously VAT-exempted). Entrepreneurs must collect VAT on deliveries of these products and registered as VAT-able Entrepreneur (*Pengusaha Kena Pajak/PKP*) if the turnover has reached more than Rp 4.8 billion per annum.

However, when determining the VAT treatment of a product, the PKP should not only look at the type of plants, because the same type of product may have a different VAT treatment. Therefore, they should also analyse the followings:

- Consumption purpose of the delivered products

  For example: coffee beans processed from coffee fruits are VAT-able goods. However, they become VAT-exempted if consumed as animal feed.
- Specific parts of the products that are delivered

  For example: corn kernel is a non-VATable good. However, other parts of corn (e.g. ear of corn, corncob and corn-husk) that have been separated from the kernel and are further processed and delivered in other forms, are VAT-able goods.

Please contact your usual PwC Indonesia consultants should you have any questions or would like to have further discussions regarding the Supreme Court decisions.

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