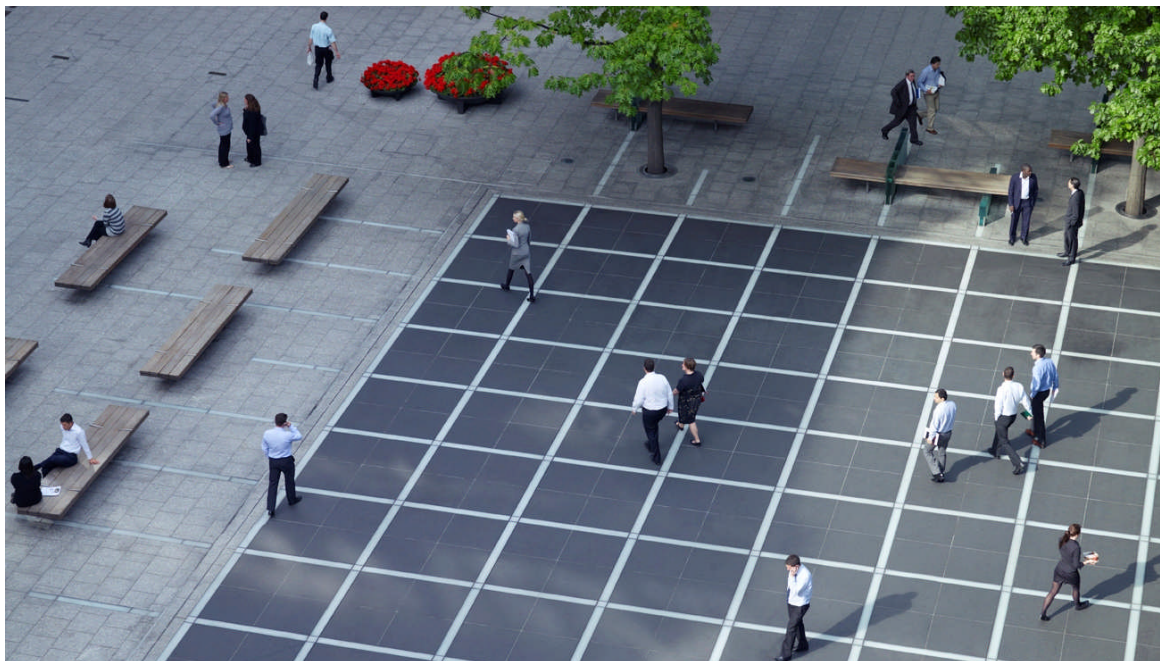


TaxFlash



Tighter grip on the capital gain tax in the property sector

Following the boom in the property sector, the Director General of Tax (DGT) issued Circular Letter No.SE-30/PJ/2014 (SE-30) on 14 August 2014 regarding the monitoring of the transfer of land and/or building rights through sale and purchase.

Under Government Regulation No. 71 year 2008, 5% final income tax on the transfer of land and building rights will rise at the time the rights to that property are transferred, which should generally be paid prior to signing the deed of sale and purchase (*Akta Jual Beli/AJB*).

There has been an increasing trend that property buyers sell their property to another buyer prior to entering into an AJB with the developer. A common example is when an initial buyer buys a property and enters into a binding agreement (*Perjanjian Pengikatan Jual Beli/PPJB*), and then after a certain length of time the price of the property rises and the initial buyer sells the property to the next buyer. At this stage, the buyer's name in the PPJB will be changed from the initial buyer to the next buyer. In reality, there are two sale and purchase transactions, i.e. from the developer to the initial buyer and from the initial buyer to the next buyer. However, from a legal perspective, the right of the land and building that is reflected by the name stated in the land certificate still remains with the developer as long as there is no AJB yet. Under this condition, the 5% final income tax is not triggered on the sale transaction from the initial buyer to the next buyer. Nevertheless, this does not eliminate the fact that there is a taxable capital gain that is enjoyed by the initial buyer.

SE-30 confirms that the gain received or obtained by the initial buyer will be subject to normal income tax under Article 17 and should be reported in the annual income tax return of the initial buyer whose name was initially listed in the binding agreement.

New requirement for golden taxpayers requesting a VAT refund

The DGT issued Regulation No. PER-25/PJ/2014 dated 23 September 2014 (PER-25) regarding the VAT return format.

PER-25 adds a new article which requires golden taxpayers who can seek a preliminary refund under Article 17C of the General Tax Provision Law to attach the following documents in hardcopy format when requesting a VAT refund:

- Export declarations (tangible/intangible goods, services) as reported in Form 1111 A1;
- Output VAT invoices and/or cancellation/return notes as reported in Form 1111 A2;
- Import declarations and/or tax payment slips on the use of offshore services/intangible goods as reported in Form 1111 B1;
- Input VAT invoices and/or cancellation/return notes as reported in Form 1111 B2 or B3.

If the taxpayers fail to meet the above criteria, the VAT return will be considered as incomplete in requesting a VAT refund. An exemption applies for taxpayers with an e-VAT invoice obligation. PER-25 came into effect starting 23 September 2014. It will be applicable for the September 2014 tax period that will be reported in October 2014.

2014 Corporate and Individual Income Tax Return

The DGT issued Regulation No. PER-19/PJ/2014 dated 3 July 2014 (PER-19), as the second amendment to DGT Regulation No. PER-34/PJ/2010 regarding the format of annual income tax returns of individual and corporate taxpayers along with the guidelines for filling out such forms.

The additional parts under PER-19 are as follows:

- For individual taxpayers using the 1770 and 1770 S forms: (i) the tax obligation status of married couples; (ii) spouse's Tax ID Number; (iii) code of assets and liability; and (iv) changing the birthdate of the dependents with Citizen ID (*Nomor Induk Kependudukan*)
- For corporate taxpayers using the 1771 form: a new tick box for the detail of final income tax under GR No.46/2013 with the detail of the revenue and the relevant 1% final income tax payment periodically.

PER-19 is applicable for the fiscal year 2014 onwards, however until the issuance of this publication there is no new e-SPT application pack update referring to PER-19.

Update on the domestic withholding tax exemption application

The DGT issued PER-21/PJ/2014 (PER-21) on 25 July 2014 regarding a revision to the application procedures for income tax exemption that is withheld and/or collected by another party. This exemption facility is applicable to taxpayers who can prove that there will be no tax payable due to:

- experiencing tax losses
- having the right for compensating tax losses
- income tax that has been paid is higher than the income tax that will be payable.

Taxpayers whose income is fully subject to final tax cannot apply for a tax exemption for their final taxed income. The main change in PER-21 is the underlined part in point no. 3 above. In the previous regulation, the wording is "...income tax that has been and will be paid...". This means that the tax office will no longer consider an estimate calculation of tax overpayment based on an estimate of taxes that will be paid (e.g. Article 25 income tax instalment to be paid for the remaining of the year). They will only consider an estimate calculation of tax overpayment based on the actual tax that has been paid. This change is essentially adopted from the old regulation regarding the same matter, i.e. the DGT Decree No. KEP-192/PJ/2002 (KEP-192). With this change, it is likely that the taxpayer will still be in a tax overpayment position if the estimated tax due for the year is realized.

Another change is in the tax loss compensation part, which is not only based on tax returns or tax assessment letters, but also based on the latest tax dispute result, i.e. Tax Objection Decision Letter, Tax Court decision, or Judicial Review decision.

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