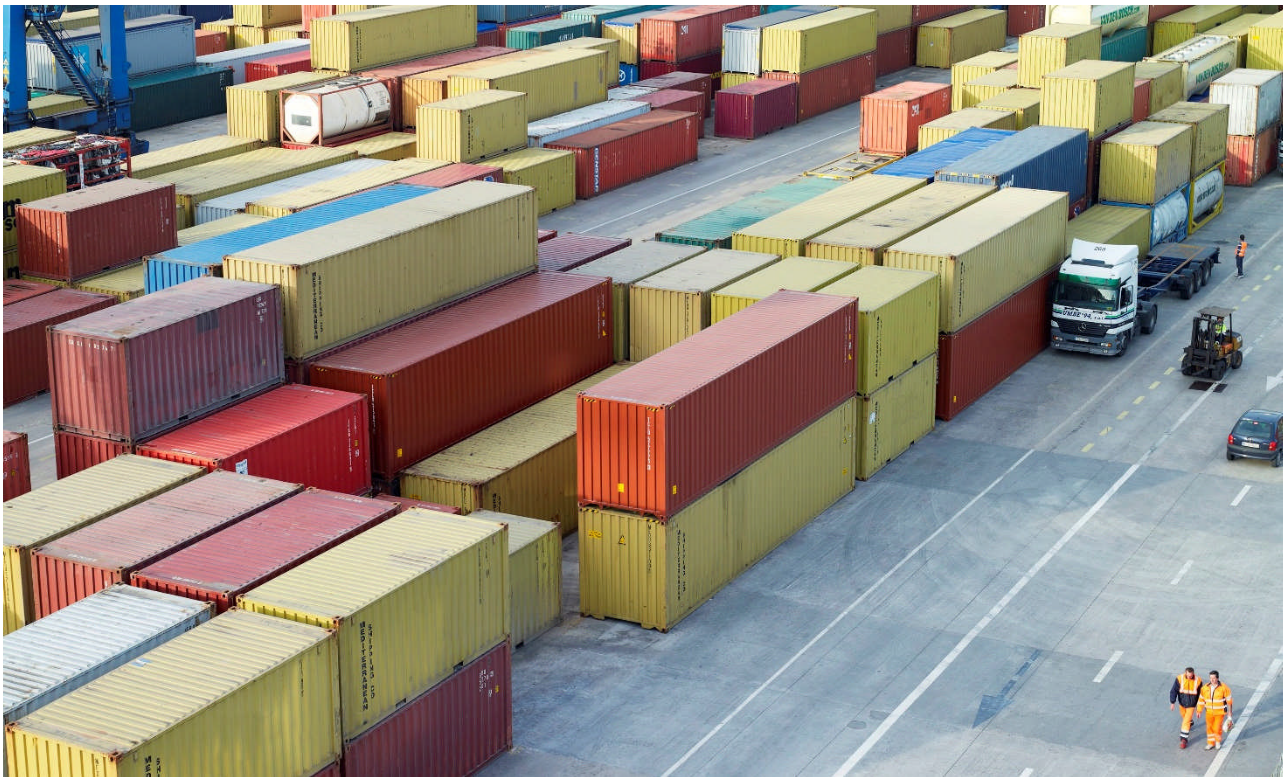
TaxFlash



Special Economic Zones

To attract investment in certain areas in Indonesia, the Government has established a new location-based concession called a Special Economic Zone (*Kawasan Ekonomi Khusus/KEK*), which is governed by Law No.39/2009.

On 28 December 2015, the Government issued Regulation (GR) No.96/2015 (GR-96) that provides comprehensive facilities available to investors in a KEK. Tax facilities under this regime are the most complete to date as they cover Income Tax, Value Added Tax (VAT), Luxury-goods Sales Tax (LST), import duty, and excise facilities.

GR-96 will be effective 60 days after enactment (from 25 January 2016). Currently, there are eight areas designated as KEKs, being:

1. Sei Mangkei
2. Tanjung Api-api
3. Tanjung Lesung
4. Mandalika
5. Maloy Batuta Trans Kalimantan
6. Palu
7. Bitung
8. Morotai

As the locations are spread across Indonesia each KEK has different resources to be developed, ranging from plantations, logistics, to tourism activities. The main targeted business activities in each KEK that will be entitled to the Corporate Income Tax (CIT) Reduction facility will be stipulated in a separate regulation. While the implementing regulations are being prepared taxpayers may refer to the official website of KEK National Council for preliminary information on each KEK.

1. Tax and customs facilities

A. General requirements

Taxpayers must meet the following criteria to be eligible for tax facilities in a KEK:

a) Taxpayers organising a KEK's business activity (*Badan Usaha*):

- have been registered by the relevant government agency to be a Business Entity that develops or manages a KEK;
- have an agreement on KEK with the relevant government agency; and
- create area boundaries of KEK's activities.

b) Taxpayers carrying out business in a KEK (*Pelaku Usaha*):

- have been registered as a domestic taxpayer;
- have a legalised new capital investment plan from the Administrator of the KEK; and
- have an information system connected to the Directorate General of Customs and Excise.

B. Income Tax facilities

a) *CIT Reduction*

A CIT Reduction facility may be granted to new taxpayers with new capital invested in the production chain of the main KEK activities as described below:

Investment plan (Rp in billion)	Reduction period (in years)	CIT reduction
> Rp 1,000	10 – 25	20% – 100%
Rp 500 up to Rp 1,000	5 – 15	
< Rp 500	5 – 15	at MoF discretion

b) *Income Tax Allowance*

Taxpayers that have been rejected for the CIT Reduction facility and taxpayers carrying out other activities in a KEK may apply for Income Tax Allowance that provides the following:

- A reduction in net taxable income of up to 30% of the amount invested in the form of fixed assets (including land), prorated at 5% for six years of commercial production provided that the assets invested are not misused or transferred within a certain period.
- Acceleration of fiscal depreciation and amortisation deductions.
- A reduction in the withholding tax rate on dividends paid to non-residents to 10% or the applicable reduced tax treaty rate.
- Extension of tax-loss carry forward for more than five years but not more than ten years.

Apart from the KEK regulation, there are similar CIT Reduction and Income Tax Allowance facilities, regulated under the Income Tax and Investment laws. However, the taxpayers in a KEK can only apply for CIT Reduction and Income Tax Allowance facilities based on GR-96.

Taxpayers can also apply for Income Tax facilities other than CIT Reduction or Income Tax Allowance, if eligible.

Applications for Income Tax facilities should be submitted to the MoF via the Administrator of the relevant KEK. Once the application is granted the taxpayer is required to submit periodic reports on the investment and production realisation.

Income tax facilities can be revoked if the taxpayer fails to fulfil requirements in the production chain of main activities in a KEK (for CIT Reduction), the capital investment realisation, or submitting the periodic reports. In such case, the taxpayer must pay the CIT, which was previously reduced and the associated sanctions.

C. Other tax facilities

On top of the Income Tax facilities mentioned above taxpayers in a KEK are also entitled to the following tax facilities:

- Non-collection of VAT and LST on the importation or domestic purchases of certain goods.
- Non-collection of VAT and LST on the delivery of certain goods between taxpayers in a KEK.
- Non-collection of Article 22 Income Tax on imports.
- Postponement of import duty on capital goods and equipment, and goods and materials for processing. Import duty is exempted on the import of capital goods to develop a KEK.
- Exemption of excise on goods to be used to produce non-excisable goods.

Goods released from a KEK will be subject to the following tax and customs treatment depending on the destination:

Destination	Tax and Customs treatment
Places outside of the Customs Area (export)	Follow the prevailing regulations on export
Places within a Customs Area that have special concessions	Follow the relevant facilities available in the destination
Other places within the Customs Area (*Tempat Lain Dalam Daerah Pabean / TLDDP)*, where the recipient is not granted any tax and customs facilities on imports	Import duty, excise, and import taxes (VAT/LST and Article 22 Income Tax) which were previously not-collected / exempted / postponed must be paid

D. Tax facilities for special activities in a KEK

The following tax facilities are available in a KEK that focuses on tourism:

- VAT refund for foreigners on the purchase of goods from participating stores.
- Exemption of LST and Article 22 Income Tax on the purchase of residences in a KEK area.
- Reduction/exemption of regional taxes and retribution.

Tax facilities may also be granted for financial services in a KEK. Detailed tax facilities for these special activities in a KEK will be regulated in a separate regulation.

2. Other facilities

On top of the tax facilities taxpayers in a KEK may enjoy investment facilities in other areas namely: movement of goods, manpower, immigration, land procurement, and licensing.

The Administrator of each KEK also serves as the authorised official to validate documents and issue decisions relevant to the application of these investment facilities.

Facilities available in a KEK in relation to the movement of goods are as follows:

- Import/export activities that are free from any restrictions that should be applicable in normal circumstances (subject to a Minister of Trade (MoT) regulation).
- Obtaining a Certificate of Origin (COO) for export purposes is easier as the authorisation to issue a COO is given to the Administrator of each KEK (instead of the MoT).
- Taxpayers in a KEK can directly release goods imported in a KEK to TLDDP using the COO from country of origin. Thus taxpayers in a TLDDP can enjoy preferential import duty rates associated with that COO.

Taxpayers that intend to hire expatriates in a KEK should make a request to the Administrator of a KEK, obtain validation of the Expatriate Manpower Utilisation Plan and approval on the associated working permits and temporary residency permits. Expatriates that have met certain criteria may be granted a permanent residency permit.

The Administrator of a KEK also implements the National Single Window policy in administering land procurement and licensing which is intended to simplify the application process. Investment approval can be issued within three hours from the submission of the application. Generally, this three-hour service can only be enjoyed by taxpayers who meet the requirements set regarding investment value and number of Indonesian employees.

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