

TaxFlash



Tax Amnesty 2016

The long-awaited Tax Amnesty Law has finally been passed by Parliament on 28 June 2016 and will be effective from the enactment date.

Aside from its controversy, this programme is intended to accelerate economic growth and restructuring through asset repatriation, boost fairer tax reforms with an expanded tax base, and increase tax revenue that is very much needed, especially to fund development in the country.

Key points of the Tax Amnesty Law are set out below.

Definition

Tax Amnesty is a waiver of tax due, administration sanctions, and tax crime sanctions which can be granted by paying Redemption Money (*Uang Tebusan*) as stipulated in this law.

The Tax Amnesty is granted on tax obligations which have not been paid or fully settled by taxpayers up to the latest fiscal year (which ended within 1 January – 31 December 2015) through assets declared using the Asset Declaration Letter for Tax Amnesty (*Surat Pernyataan Harta untuk Pengampunan Pajak/SPHPP*). The scope of this Tax Amnesty covers Income Tax, Value Added Tax (VAT) and Luxury-goods Sales Tax (LST).

Eligibility

All taxpayers are eligible for Tax Amnesty, except for taxpayers whose investigation cases have been declared complete by the Prosecutor (*Kejaksaan*); who are undergoing court proceedings; or are undergoing criminal punishment, for a tax crime.

Scope of the undeclared assets

Tax Amnesty is granted on the net assets (assets minus liability) that are declared in the SPHPP, which covers net assets that are placed inside or outside of Indonesia. The liability covers all principal of the liabilities that were used to acquire the assets.

The assets and liabilities that are reported in the SPHPP are the ones that are:

Net Assets	Value to be used
Already declared in the latest* Annual Income Tax Return (AITR)	<ul style="list-style-type: none"> Rupiah amount as used in the latest AITR; or If using USD bookkeeping – Rupiah amount translated using the Minister of Finance Foreign Exchange Rate (MoF rate) used to calculate the latest AITR
Additional assets and liabilities that have not been reported in the latest AITR	<ul style="list-style-type: none"> Rupiah amount of the nominal value of cash assets or fair value for non-cash assets as of the end of the latest fiscal year; or If in foreign currency – Rupiah amount of the nominal value of cash assets or fair value for non-cash assets translated using the MoF rate at the end of the latest fiscal year

*Latest fiscal year is:

- 2015 – if fiscal year ended in 1 July – 31 December 2015
- 2014 – if fiscal year ended in 1 January – 30 June 2015

Redemption Money rates and imposition base

General taxpayers	Redemption Money rates based on SPHPP submission period		
	July – September 2016	October – December 2016	January – March 2017
Offshore assets declaration – not repatriated to Indonesia	4%	6%	10%
Offshore assets declaration – repatriated to and invested in Indonesia for minimum of three years	2%	3%	5%
Onshore assets declaration – retained in Indonesia for minimum of three years	2%	3%	5%

Taxpayers with turnover up to Rp 4.8 billion as of 31 December 2015	
Assets declaration up to Rp 10 billion	0.5%
Assets declaration above Rp 10 billion	2%

The imposition base of the Redemption Money is calculated based on the Net Asset Value (NAV), which has not been fully reported in the latest AITR.

For the purpose of calculating the imposition base of the Redemption Money, the value of the liabilities is limited to:

- 75% of the additional assets' value for corporate taxpayers
- 50% of the additional assets' value for individual taxpayers

Procedures

Requirements

The requirements to qualify for Tax Amnesty are as follows:

- a) Have a Tax ID Number (*Nomor Pokok Wajib Pajak*)
- b) Pay the Redemption Money
- c) Settle all outstanding tax liability (*Tunggakan Pajak*)
- d) Settle unpaid tax or tax that should not have been refunded – for a taxpayer who is under preliminary evidence tax audit and/or investigation
- e) Submit the latest AITR
- f) Revoke any of the following ongoing legal processes relating to the taxpayer's tax affairs:
 - Tax overpayment refund
 - Reduction or cancellation of administrative sanction in a Tax Assessment Letter or Tax Collection Letter which has tax principal payable
 - Reduction or cancellation of incorrect tax assessment
 - Tax Objection
 - Revision of tax assessment letters and decision letters
 - Tax Appeal
 - Tax Lawsuit
 - Judicial Review

For taxpayers who will repatriate the offshore assets into Indonesia, they must do so by:

- a) 31 December 2016 – for taxpayers using 2% and 3% Redemption Money rates
- b) 31 March 2017 – for taxpayers using the 5% Redemption Money rate

For taxpayers who declared onshore assets, they cannot transfer the assets outside of Indonesia within three years since the issuance of Tax Amnesty Approval (*Surat Keterangan Pengampunan Pajak/ SKPP*).

The SPHPP must contain the taxpayer's Tax ID Number, assets, liabilities, NAV, and Redemption Money calculation and be attached to:

- a) Payment slip of the Redemption Money (in the form of *Surat Setoran Pajak*)
- b) Settlement evidence of all outstanding tax liabilities
- c) List of assets along with the ownership information (such as location, year of acquisition, ownership evidence number)
- d) List of liabilities along with its supporting documents
- e) Settlement evidence of unpaid tax or tax that should not have been refunded – for a taxpayer who is under preliminary evidence tax audit and/or investigation
- f) A copy of the latest AITR
- g) Statement letter to revoke all of the above ongoing legal processes
- h) If repatriating offshore assets – Statement letter to repatriate and invest the assets in Indonesia for a minimum of three years
- i) If declaring onshore assets – Statement letter not to transfer the assets outside of Indonesia within three years since the issuance of SKPP
- j) If the turnover is up to Rp 4.8 billion in the last fiscal year – Statement letter regarding the amount of turnover

Submission and approval process

Prior to submission, taxpayers ask for explanations regarding the filling and completion of documents to be attached to the SPHPP to the Director General of Tax (DGT) office or other places determined by the MoF. Afterwards, taxpayers pay the Redemption Money and submit the SPHPP along with its attachments.

The taxpayer must submit an SPHPP that is signed (by the individual; the highest rank management based on deed of establishment in the case of company; or a proxy if the management is unavailable), to the MoF through the tax office where the taxpayer is registered, or other places determined by the MoF, and will be given a receipt.

Upon receipt of the SPHPP up until the issuance of the SKPP:

- a) The taxpayer will not be subjected to tax audit, preliminary evidence tax audit, and tax crime investigation, for fiscal periods up to the end of the latest fiscal year.
- b) Any ongoing tax audit, preliminary evidence tax audit, and tax crime investigation for the same fiscal periods will be deferred. These processes will be discontinued if the MoF has issued the SKPP.

The MoF or the authorised officer issues the SKPP within 10 working days after the date of the SPHPP receipt, otherwise the SPHPP is deemed approved and becomes an SKPP.

Subsequent Declarations, Revision of the Tax Amnesty Approval and Refund

Taxpayers can submit a subsequent Tax Amnesty declaration up to three times within the applicable period, i.e. up to 31 March 2017. The imposition base upon the second or the third application will take into account the imposition base in the previous submission.

The MoF may revise a SKPP if there is a typo or miscalculation in the SKPP.

If the subsequent declaration or revision resulted in overpayment of redemption money, the overpayment must be refunded and/or taken into account to settle other tax liability within three months of the issuance of the SKPP revision or the submission of subsequent declarations.

Incentives

Main incentives

The following incentives are applicable for taxpayers who have received an SKPP:

- a) Waivers of tax due, tax administrative sanctions, and tax crime sanctions for all tax obligations for fiscal periods up to the end of the latest fiscal year, for which no assessment letters have been issued.
- b) Waivers of administrative sanctions in the form of interest and fines for fiscal periods up to the end of the latest fiscal year.
- c) Exemption from tax audit, preliminary evidence tax audit, and tax crime investigation for all tax obligations for fiscal periods up to the end of the latest fiscal year.
- d) Discontinuation of any ongoing tax audit, preliminary evidence tax audit, and tax crime investigation for all tax obligations for fiscal periods up to the end of the latest fiscal year.

Other incentives

- a) Titles of assets in the form of land, building, and/or stocks, that is not yet in the name of the taxpayer, must be transferred to the name of the taxpayer. Such title transfer is exempted from Income Tax if:
 - the application for transfer of rights is carried out by 31 December 2017; or
 - in the case that the title cannot yet be transferred, a notarial statement stating that the asset is truly owned by the taxpayer is carried out by 31 December 2017
- b) Data and information contained in the SPHPP cannot be used as a basis for crime inquiry (*penyelidikan*), investigation (*penyidikan*) and/or prosecution (*penuntutan*) of the taxpayer.

Restrictions

A taxpayer who applied for Tax Amnesty cannot:

- a) Use the remaining tax loss carried forward from fiscal periods up to the end of the latest fiscal year to the following fiscal period
- b) Compensate tax overpayment (for Income tax, VAT, and LST) from fiscal periods up to the end of the latest fiscal year to the following fiscal period
- c) Request an Income tax, VAT, or LST refund for fiscal periods up to the end of the latest fiscal year; and/or
- d) Revise Income tax, VAT, or LST returns for fiscal periods up to the end of the latest fiscal year after the enactment of this law

Tax Assessments and Decision letters

The scope of Tax Assessments or Decision letters (collectively referred to as “decisions”) in this section covers:

- a) Tax Assessment Letters;
- b) Decision letters for Preliminary Refund of Tax Overpayment;
- c) Decision letters for Revision;
- d) Decision letters for Reduction of Tax Assessment;
- e) Decision letters for Cancellation of Tax Assessment;;
- f) Tax Objection Decision;
- g) Tax Appeal Decision;
- h) Lawsuit Decision; and/or
- i) Judicial Review Decision

for fiscal periods up to the end of the latest fiscal year.

If a decision is issued after the submission of the SPHPP, the taxpayer cannot claim a tax loss compensation, tax overpayment compensation or a tax refund and the DGT cannot perform active collection efforts resulting from these decisions. However, if a decision is issued prior to the submission of the SPHPP, the taxpayer can claim a tax loss compensation, tax overpayment compensation or a tax refund and the DGT can perform active collection efforts resulting from these decisions.

If such decisions were issued prior to the submission of the SPHPP, the DGT is not legally liable to pay interest to the taxpayer resulting from these decisions.

Assets repatriation and Investment

Deadline for offshore assets to be repatriated and invested in Indonesia are:

- a) 31 December 2016 – for taxpayers using 2% and 3% Redemption Money rates
- b) 31 March 2017 – for taxpayers using the 5% Redemption Money rate

The investment through the MoF-appointed perception banks must be retained for a minimum of three years after the repatriation date.

The investments can be made in the following forms:

- a) Government securities
- b) State-Owned Enterprises' (SOEs') bonds
- c) State-Owned Financing Companies' bonds
- d) Financial instruments in the MoF-appointed perception banks
- e) Private company bonds, the trading of which is supervised by the Financial Services Authority
- f) Infrastructure investments through government's cooperation with business entities
- g) Investment in the real sector based on the priorities set by the government through an MoF Decree; and/or
- h) Other investment forms.

Taxpayer must submit a report to the MoF regarding:

- a) Realisation of the repatriation and investment of offshore assets; and/or
- b) Placement of the onshore assets that cannot be transferred outside of Indonesia

If the taxpayer failed to:

- a) Execute the repatriation and investment of offshore assets in the prescribed investment by the deadline
- b) Retain the onshore assets for a minimum of three years

the MoF may issue a warning letter and taxpayer must respond to the warning letter within 14 working days.

If the response confirms that the taxpayer failed to execute the asset repatriation, investment, or retention, the following consequences will apply:

- a) The net assets declared in the SPHPP will be deemed as additional income in the fiscal year 2016 and will be subject to tax and sanctions according to the prevailing tax regulation
- b) The paid Redemption Money will be used to compensate the above tax due
- c) The main incentives still apply

Post filing bookkeeping

Recording of assets

The NAV that was used as the imposition base of the Redemption Money and which has been granted a Tax Amnesty must be presented as an additional Retained Earnings section in the balance sheet for the taxpayers who have bookkeeping requirements.

Amortisation and depreciation

The additional assets declared in the SPHPP in the form of intangible assets cannot be amortised for tax purposes, while the tangible assets also cannot be depreciated.

Undisclosed Assets

If in the future there is information that there are assets that have not been declared in the SPHPP, the assets will be deemed as additional income at the time of finding and will be subject to income tax according to the prevailing tax regulation plus an increment of 200% of the tax due.

If a taxpayer never submitted a SPHPP, and the DGT found information on undeclared assets that were acquired by the taxpayer since 1 January 1985 up to 31 December 2015, the assets will be deemed as additional income at the time of finding by three years following the enactment of this law at the latest, and will be subject to tax and sanction in accordance with the prevailing tax regulation.

Lawsuit

Any dispute related to the implementation of this Law can only be settled through the lawsuit process that is filed with the Tax Court.

Confidentiality

The data and information from the Tax Amnesty programme will be used as a basis for tax data. However, the DGT cannot share the data with any other party, except if requested by the relevant taxpayer.

Implementing regulation

The implementing regulation regarding the detailed procedures of the Tax Amnesty, the appointment of the perception bank, the detailed procedures for investment, the reporting, and the authorised officials to carry out this law will be further governed under a separate Ministerial regulation.

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