

# TaxFlash



## **Tax Amnesty Implementation Rules**

Subsequent to the finalisation of Tax Amnesty Law No.11/2016 (Law-11) on 1 July 2016, the Minister of Finance (MoF) and the Director General of Tax (DGT) have issued the following implementing regulations:

1. MoF Regulation No.118/PMK.03/2016 (PMK-118) on the Implementation of Law-11;
2. MoF Regulation No.119/PMK.08/2016 (PMK-119) regarding Procedures for Asset Repatriation into Indonesia and Placement in Investment Instruments;
3. MoF Decree No.600/KMK.03/2016 (KMK-600) naming the Perception Banks (*Bank Persepsi*) that are appointed as the acceptor of Redemption Money from Tax Amnesty;
4. DGT Regulation No.PER-06/PJ/2016 regarding Format of the Tax Payment Slip that stipulates Deposit Codes for various payments related to Tax Amnesty;
5. DGT Regulation No.PER-07/PJ/2016 regarding Tax Amnesty Documentation and Completion Guidelines;
6. DGT Circular Letter No.SE-30/PJ/2016 on the Tax Amnesty Implementation Guidelines;
7. DGT Letter No.S-184/PJ./2016 on the Announcement of the Tax Amnesty Programme; and
8. DGT Letter No.S-872/PJ.09/2016 regarding the Counselling, Service, and Socialisation of the Tax Amnesty.

Please refer to our TaxFlash No.9/2016 for the main discussion about Law-11. We have outlined below the key implementing rules of Law-11 governed under the above implementing regulations.

## Submission

The Tax Amnesty Asset Declaration Letter (*Surat Pernyataan Harta untuk Pengampunan Pajak/SPHPP*) should be submitted directly (i.e. physically at the submission point) by the taxpayer to the Tax Service Office (TSO) where the taxpayer is registered or to certain places as stipulated by the MoF (e.g. the Consulate General of the Republic of Indonesia in Hong Kong, Embassies of the Republic of Indonesia in Singapore and London, and certain other MoF-appointed locations).

Where the taxpayer is not able to submit the declaration letter directly, the submission may be performed by their proxy (who should also provide a signed proxy letter). The proxy letter should be made in accordance with the Civil Law code.

If the SPHPP was not submitted directly, did not have a proxy letter attached (if required), and/or was incomplete, the SPHPP will not be considered to have been submitted. In this case, the SPHPP along with its supporting documents will be returned to the taxpayer and no receipt will be given.

After the SPHPP has been submitted to the TSO (or other permitted locations), the Tax Amnesty Approval (*Surat Keterangan Pengampunan Pajak/SKPP*) will be issued by the Regional Tax Office Head which supervises the TSO where the taxpayer is registered.

## Payment of Redemption Money

The Redemption Money should be settled through a Perception Bank using a Tax Payment Slip with Tax Account Code No.411129 and Deposit Code No.512.

## Taxpayers with gross turnover of up to Rp4.8 billion

Taxpayers with annual gross turnover up to Rp 4.8 billion can enjoy a lower Redemption Money rate of up to 2% (depending on the value of the net assets declared). These lower rates are only available to taxpayers who generate business revenue, rather than employment and/or professional income (e.g. doctors, notaries, accountants, architects, or lawyers).

The above turnover is determined based on:

- a. a statement letter prepared by the taxpayer confirming the amount of sales turnover from January – December 2015; or
- b. the latest Annual Income Tax Return (AITR) for taxpayers with an obligation to file tax returns.

## Special Purpose Vehicle (SPV)

Where a taxpayer holds assets indirectly through an SPV, the taxpayer must declare the ownership of the assets and the related liabilities in the list of assets and liabilities.

## Tax arrears

One of the requirements to apply for Tax Amnesty is to pay all tax arrears prior to the submission of the SPHPP.

PMK-118 defines tax arrears as outstanding unpaid tax principle (i.e. excluding administration sanctions) that is based on:

- a. Tax Collection Letters,
- b. Tax Underpayment Assessments,
- c. Additional Tax Underpayment Assessments,
- d. Decision Letters for Revision,
- e. Tax Objection Decisions,
- f. Tax Appeal Decisions,
- g. Lawsuit Decisions, and/or
- h. Judicial Review Decisions,

which have caused additional tax to be payable (including tax that should not have been refunded). Any administrative sanctions in the above letters and decisions will be waived under the Tax Amnesty facility.

Furthermore, the regulations provide that:

- a. tax arrears include tax collection costs;
- b. if tax arrears have been partially paid, the allocation of this payment must be conducted on a prorated basis between the tax principle and the administrative sanctions based on DGT data;
- c. if the DGT data does not contain a detailed calculation of the administrative sanction, the administrative sanction is deemed to be 48% of the tax payable amount.

### **Revocation of ongoing legal processes relating to taxpayer's tax affairs**

Another requirement to apply for Tax Amnesty is to revoke ongoing legal processes relating to the taxpayer's tax affairs. As a consequence, the taxpayer is deemed to have agreed with the disputed DGT or Tax Court assessment or decisions etc., such that those legal products will have a permanent legal basis and the tax principle under these assessment or decisions etc. will become outstanding tax arrears that must be settled prior to the submission of the SPHPP.

### **Consequences of the restrictions under the Tax Amnesty**

There are a number of restrictions applicable to taxpayers enrolled in the Tax Amnesty programme including:

- (1) Taxpayers forfeit any tax loss carried forward as at the end of the latest fiscal year. Should the tax loss have already been carried forward, the taxpayer must revise any benefitting tax return.
- (2) Taxpayers cannot compensate any tax overpayments (i.e. Income Tax, VAT, and/or LST) as at the end of the latest fiscal year to the following fiscal period against future periods. If the tax overpayments have already been compensated, the taxpayers must revise the benefitting tax return.
- (3) Taxpayers cannot revise Income Tax, VAT, and/or LST returns for fiscal periods up to the end of the latest fiscal year after the enactment of Law-11. If the tax return revisions have been submitted, the tax return revisions will be considered invalid.

The DGT will waive any administrative sanctions arising from tax return revisions under points (1) and (2) above.

### **Amendments to the Approval Letter**

The MoF may amend an Approval Letter if there is a typo or miscalculation in that Approval Letter.

If the typo or miscalculation causes an underpayment of Redemption Money:

- a. The TSO will issue a Clarification Letter upon finding the typo or miscalculation;
- b. The taxpayer should settle the underpayment within 14 working days from the Clarification Letter being issued, and the TSO will subsequently issue an Amendment Letter;
- c. If the taxpayer has not settled the underpaid Redemption Money within 14 working days, the TSO will issue an Amendment Letter on an ex-officio basis to adjust the value of the assets in accordance with the Redemption Money paid and the asset value difference is treated as undisclosed assets. Such undisclosed assets will be considered additional income and will be subject to Income Tax according to the prevailing tax regulations and subject to a penalty at 200% of the tax due.

If the typo or miscalculation causes an overpayment of Redemption Money:

- a. The TSO will issue an Amendment Letter upon finding the typo or miscalculation.
- b. The overpaid tax should be refunded or compensated with other tax obligations within three months following the issue of the Amendment Letter.

### **Submission of new SPHPP**

During the Tax Amnesty period, taxpayers can submit on SPHPP at most three times.

The avenue for submitting the second or third SPHPP is provided for the taxpayers:

- (1) To declare additional assets that have not been declared in the first or second SPHPP;
- (2) if the taxpayer cancels its intention to repatriate and invest the assets into Indonesia during the Tax Amnesty period; or
- (3) if the taxpayer fails to retain the onshore assets for a minimum of three years after SKPP is issued.

Submission process of the second or third SPHPP remains the same with the first and the Regional Tax Office Head must issue a SKPP on the new SPHPP.

The Redemption Money will be recalculated using the rate applicable on the period of the second or third SPHPP submission. If the new SPHPP is made due to point (2) and (3), the SPHPP will be considered to be a declaration of offshore assets subject to the higher Redemption Money rates (i.e. 4%, 6% or 10%).

However, if the new SPHPP causes an overpayment of Redemption Money, that overpaid tax should be refunded or compensated with other tax obligations within three months following the submission of the second or third SPHPP.

### **Procedures for offshore assets repatriation**

As stipulated in Law-11, taxpayers must repatriate and invest offshore assets into Indonesia in order to use the lower Redemption Money rate for offshore asset declaration .

PMK-119 expands the definition of offshore assets to include funds that have been placed within Indonesia after 31 December 2015 and prior to the issue of the SKPP. Therefore such assets must be invested in accordance with the prescribed investment list for offshore assets repatriation in order to avail the lower Redemption Money rates.

The steps to repatriate and invest offshore assets under PMK-119 are as follows:

- a. After the taxpayer has received the SKPP, they must open a Special Account (*Rekening Khusus*) in one of the MoF-appointed Perception Banks. There are 77 Perception Banks appointed by the MoF as the acceptor of Redemption Monies (as regulated in KMK-600).
- b. Taxpayers must transfer the funds from the offshore assets into the Special Account, either to the MoF-appointed Perception Banks in Indonesia or to an offshore branch of the MoF-appointed Perception Banks. The three-year investment requirement is calculated starting from this point.
- c. If the transfer is made through the offshore branch of the MoF-appointed Perception Banks, the offshore branch must transfer the funds to the MoF-appointed Perception Banks in Indonesia by the end of the next working day.
- d. Funds that have been transferred to the Perception Banks can be placed in a prescribed list of investment instruments through Banks, Investment Managers, or Securities Brokers that have been appointed in writing by the MoF to place the funds and manage the investment in light of the Tax Amnesty program (collectively referred to as "Gateways"). The criteria and obligations of the Gateways is stipulated in PMK-119.

The prescribed list of investments as stated in the Law is as follows:

- 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 whose trading is supervised by the Financial Services Authority;
- f. Infrastructure investments through the 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.

PMK-119 provides a detailed list of the prescribed investment forms under letters a, b, c, d, e and h above, as follows:

- a. Debt securities, including Medium Term Notes;
- b. *Sukuk* (Islamic Bonds);
- c. Shares;
- d. Mutual funds;
- e. Asset-backed securities;
- f. Real Estate Investment Funds;
- g. Time deposits;
- h. Savings accounts;
- i. Current accounts; and/or
- j. Other financial investment instruments, including insurance, financing companies, pension funds, or venture capital products, which are approved by the Financial Services Authority.

Investments made through Gateways can be used as loan collateral in the Gateway banks.

### Assets reporting

Law-11 requires taxpayers who are using the lower rates to submit periodic reports to the MoF regarding:

- a. realisation of the repatriation and investment of offshore assets on a semi-annual basis for three years following the repatriation; and/or
- b. placement of the onshore assets that cannot be transferred outside of Indonesia on a semi-annual basis for three years following the issue of the SKPP.

These reports are due on 20 January and 20 July for the reporting periods of July – December and January – June, respectively. Failure to meet these deadlines will trigger the TSO to issue a Warning Letter and the taxpayer having to submit the reports within 14 working days. If the reports have not been submitted within 14 working days:

- a. the net assets declared in the SPHPP will be deemed to be additional income in the fiscal year ended 2016 and become subject to Income Tax and associated sanctions according to the prevailing tax regulation; and
- b. the paid Redemption Money will be used to compensate for the above tax due.

The administrative sanction will be 2% per month for a maximum of 24 months, starting from 1 January 2017 until the issue of a tax assessment letter.

### Income Tax exemption on asset title transfer

Titles of assets in the form of land, buildings, and/or shares, that are not yet held 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 land and/or building (L&B) rights or the agreement of share transfer is carried out by 31 December 2017; or
- in the case that the L&B 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.

The Income Tax is exempted by applying for a Tax Exemption Letter (*Surat Keterangan Bebas/SKB*) to the TSO where the taxpayer is registered. For L&B, the application must be done prior to the transfer of rights.

The requirements for applying for the SKB are as follows:

Land and/or Building	Shares
Copy of the SKPP	Copy of the SKPP
Copy of the latest L&B Tax Notice ( <i>Surat Pemberitahuan Pajak Terhutang Pajak Bumi dan Bangunan</i> )	Copy of the Establishment Deeds and its amendments for the company whose shares are transferred
Notarial statement letter stating that the asset is truly owned by the taxpayer	Notarial statement letter stating that the asset is truly owned by the taxpayer
Copy of sale/purchase/grant deed on the transferred L&B	

The TSO will issue the SKB within five working days following the application for the SKB being received, otherwise the application is deemed to have been approved and the TSO must issue the SKB within the next two working days.

The SKB contains an Income Tax exemption for the transferring party and is valid up until 31 December 2017. If the taxpayer has not transferred the asset title by 31 December 2017, the asset title transfer will be subject to the normal tax treatment under prevailing laws.

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