TaxFlash

Gateway obligations under Tax Amnesty program

On 5 September 2016, the Director General of Tax (DGT) issued Regulation No.PER-12/PJ/2016 (PER-12) regarding the procedure for gateway reporting for the implementation of the Tax Amnesty.

PER-12 stipulates that gateway reporting to the DGT should include the following:

a) opening and placement of funds into a special account;
b) opening of an investment account for the purpose of placement of investment; and
c) position of taxpayer's investment:
    1. on a monthly basis; and/or
    2. whenever there is a transfer of funds or investment between gateway

In addition, the gateway report should be submitted in softcopy to the DGT directly or online through the Head Office of the External Data Processing Unit.

Gateway who do not fulfil the obligations may be given a sanction in the form of a warning letter or may have their appointment as gateway revoked.

An exception to the requirement to disclose information and make a mandatory tender offer

There is a requirement in the Attachment point 3.a of the Head of Bapepam-LK Regulation No.KEP-264/BL/2011 (KEP-264) that a new controlling shareholder of a listed company should publicly announce the acquisition of a listed company and to carry out a mandatory tender offer. On the other hand, the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*) Regulation

No.31/POJK.04/2015 (POJK-31) requires the acquired listed company to inform OJK and to publicly announce information on the new controlling shareholder.

As a part of the support for the implementation the Tax Amnesty program, the OJK has issued Regulation No.35/SEOJK.04/2016 (SE-35) dated 2 September 2016 stipulating an exception from the above requirements if there is a newly disclosed controlling shareholder resulting from a declaration under the Tax Amnesty program. SE-35 has been effective since 2 September 2016 and will end 20 working days from 31 March 2017.

A taxpayer who has joined the Tax Amnesty program and is disclosed as a controlling shareholder of a listed company is obliged to submit to the OJK the following documents:

a) a copy of the Tax Amnesty approval letter along with information on share ownership in the listed company; and
b) a commitment letter to transfer all acquired assets into a securities account under the taxpayer's name.

PSAK 70: 'Accounting for Tax Amnesty Assets and Liabilities"

On 19 September 2016, the Indonesia Financial Accounting Standards Board (DSAK IAI) issued PSAK 70: 'Accounting for Tax Amnesty Assets and Liabilities' (PSAK 70). The objective of the issuance of the standard is to provide specific accounting treatment related to the application of the Tax Amnesty Law. Please refer to our recent Accounting News Flash that summarize the PSAK 70.

New Indonesia – India Tax Treaty

The sending of Diplomatic Notes from Indonesia on 5 February 2016 completed the exchange of ratification documents and marked the entry into force of the Indonesia – India tax treaty. This treaty, with the effective dates of 1 January 2017 for Indonesia and 1 April 2017 for India, was signed on 27 July 2012 and will replace the current treaty, which was signed on 7 August 1987.

The DGT announced the completion of this process through the issue of Circular Letter No.SE-31/PJ/2016. Below are the key changes stipulated in the new tax treaty.

1. Dividend withholding tax (WHT) rate

The current WHT rates are 10% for a company that holds at least 25% of the shares or 15% in all other cases. Under the new tax treaty, the WHT rate will be 10% in all cases.

2. Royalties and fees for technical services WHT rate

Royalties will be taxable at a maximum rate of 10% as opposed to the current 15%. The new tax treaty also stipulates new provisions to the effect that service fees including for technical, management, and consulting services are subject to 10% WHT.

3. Branch Profit Tax rate

Branch profits will be taxable at a maximum rate of 15%, as opposed to the current 10%. This rate is not applicable to production sharing contracts relating to the exportation and production of oil and natural gas entered into by the Government or any person authorised by it.

4. Tax on the operation of ships in international traffic

Under the new tax treaty, profits from the operation of ships in international traffic shall be taxable only in the resident State in which the place of effective management of the enterprise is situated. However, the new tax treaty gives taxation rights in respect of profits originating from a source State from the operation of ships in international traffic to the source State, but the tax imposed shall be reduced by 50%. The new tax treaty also gives taxation rights on profits derived from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic to the resident State, unless the containers are used solely within the source State.

5. Tax on capital gains on shares

The new tax treaty provides rights to the source State to tax capital gains from the alienation of shares deriving more than 50% of the value directly or indirectly from immovable property situated in that source State.

6. *Updates on Exchange of Information (EOI)*

The new tax treaty further incorporates provisions for the effective EOI. Both countries must entertain an information request, although one country may have no need for such information for its own tax purposes. They cannot decline an information request solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interest in a person.

7. *Limitation of Benefits*

The new tax treaty contains a new Article regarding the Limitation of Benefits that emphasise the anti-abuse provisions to ensure that the benefits of the tax treaty are only enjoyed by genuine residents. This provision allows the use of domestic laws and measures to mitigate tax avoidance or evasion.

A tax resident is not entitled to the benefits of the tax treaty if its affairs have been arranged for the main purpose of enjoying the tax treaty benefits or if, as a legal entity, it does not have bonafide business activities.

8. *Assistance in collection*

A new Article has been inserted regarding assistance in the collection of taxes between both countries. This article details the scope and procedure for assistance in tax collection.

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