

# TaxFlash



## ***Tax Amnesty – changes in the general implementation rules***

The Minister of Finance (MoF) has released Regulation No.141/PMK.03/2016 (PMK-141) dated 23 September 2016 that amends the general implementation rules for the Tax Amnesty as regulated in MoF Regulation No.118/PMK.03/2016 (PMK-118). The key changes stipulated in PMK-141 are set out below.

### **Additional Attachments required for Permanent Establishments (PEs)**

To apply for Tax Amnesty, taxpayers must submit an Assets Declaration Letter for Tax Amnesty (*Surat Pernyataan Harta untuk Pengampunan Pajak/SPHPP*) along with the required attachments. If the taxpayer is a PE, there are some additional attachments that must be provided, as follows:

- a. a copy of the latest Annual Income Tax Return (AITR) of the Head Office which previously submitted in the home country;
- b. a copy of the latest consolidated Financial Statements (FS) of the Head Office; and
- c. a Statement letter which confirms that the additional assets declared in the SPHPP have not been reported in both the AITR and the latest consolidated FS.

### **Restriction on onshore assets declared**

PMK-141 changes the restriction for the declared additional onshore assets. Previously, declared onshore assets were restricted from being transferred overseas within three years from the issuance of the Tax Amnesty Approval (*Surat Keterangan Pengampunan Pajak/SKPP*), regardless of the purpose of the transfer. Under PMK-141, the assets are only restricted if the taxpayer transfers and invests the assets overseas within three years from the issuance of the SKPP. What constitutes investment is not further elaborated in PMK-141.

## Income tax exemption on the title transfer of land and/or buildings

PMK-141 adds the conditions for the income tax exemption on the transfer of Land and/or Building (L&B) title. The income tax exemption is only applicable if the name in the L&B ownership document is still in the name of the nominee, grantor (*pemberi hibah*), the deceased (*pewaris*), or one of the heirs (if the inherited L&B had been divided). The exemption is not applicable if the taxpayer bought the L&B from a developer and the title of that L&B has not been already transferred to the taxpayer.

### Administrative matters

#### 1. Extension to complete certain information or documents until 31 December 2016

To implement Article 50A (1) point (e) of PMK-141, the Director General of Tax (DGT) has issued Regulation No.PER-13/PJ/2016 (PER-13) on 26 September 2016 that specifically regulates procedures to ease eligible taxpayers that are intending to submit SPHPP within the last week of the first submission period (ending on 30 September 2016) but who need time to complete some of the required attachments.

PER-13 allows DGT to issue a receipt on SPHPPs that were submitted with certain minimum attachment requirements (i.e. not as complete as the normal SPHPP attachment requirements) and a SKPP will still be issued by the Head of Regional Tax Office within the next 10 working days.

#### Follow-up actions

The DGT will send the taxpayer a request letter to complete the document and/or information by 31 October 2016. The taxpayer should respond to the request letter by directly submitting the outstanding documents and/or information at the latest by 31 December 2016.

If the taxpayer's response leads to an overpayment or underpayment of the Redemption Money but still satisfies the requirements in PMK-118 *juncto* PMK-141, the SKPP will be revised to reflect the change.

However, if the taxpayer's response does not satisfy the requirements in PMK-118 *juncto* PMK-141, SKPP will be considered as null and void. The DGT will return the submitted SPHPP (and attachments) and notify the status of SKPP as null and void. The taxpayer can still submit a new SPHPP along with the attachments in the following submission period.

#### 2. Submission of SPHPP and Attachments

A list of detailed assets and liabilities is as one of the mandatory attachments to the SPHPP. This list must be submitted both in hardcopy and softcopy formats. However, certain taxpayers are excluded from the obligation to submit the softcopy format. The criteria of those excluded will be regulated in a separate DGT regulation.

The DGT is authorised to determine special procedures to handle exceptional situations during the SPHPP submission process in a separate regulation, as follows:

- a) force majeure situations (i.e. fire, natural disaster, and riots).
- b) network disruption or exceptional conditions at the end of submission periods (such as long queues at the submission points). The DGT has issued Regulation No.PER-14/PJ/2016 to govern the submission process for this situation. Taxpayers will be given a temporary receipt upon the submission of SPHPP and the SKPP will still be issued within 10 working days from the date of the temporary receipt. After the SKPP is issued, the follow-up actions are similar with point 1 above.

#### 3. Post-declaration reporting obligation

PMK-141 adjusts the reporting requirement for declared onshore assets and repatriated offshore assets from a semi-annual to an annual reporting basis. This reporting is required for three years and the deadline to submit these reports follows the deadline to submit AITR.

#### *4. Revocation of SPHPP based on taxpayer's initiative*

Individual taxpayers having:

- a) income less than certain threshold; and/or
- b) additional assets only from inheritance or grant that are not subject to Tax Amnesty based on DGT Regulation No.PER-11/PJ/2016

but have applied for Tax Amnesty, may cancel their submitted SPHPP.

This can be performed by submitting a revocation letter by:

- a) 30 October 2016 if the SKPP has already issued prior to 23 September 2016; or
- b) 30 days after the date of the SKPP if it has been issued after 23 September 2016.

The SPHPP is considered as having never submitted if the revocation letter has been submitted prior to the issuance of the SKPP.

Based on this revocation, the submission receipt and SKPP would then be considered as null and void. The taxpayers would then be considered to be not applying for Tax Amnesty and the associated facilities are no longer applicable to the taxpayers.

#### *5. Redemption Money*

Redemption Money is treated as income tax, and thus is not deductible in the calculation of taxable income.

#### *6. The use of declared information to mitigate certain criminal acts*

If the same data disclosed under the Tax Amnesty program is also obtained and used by authorised officials to tackle crimes in Transnational Organized Crimes (TOC), i.e. narcotics, terrorism, and human trafficking, these authorised officials can still perform their duty according to the prevailing laws.

### ***Tax Amnesty – new rules on Special Purpose Vehicle***

On the same date as PMK-141, the MoF also issued Regulation No.142/PMK.010/2016 (PMK-142) that amends MoF Regulation No.127/PMK.010/2016 regarding Tax Amnesty for taxpayers that indirectly hold assets through a Special Purpose Vehicle (SPV).

PMK-142 stipulates that the requirement to dismantle or relinquish ownership of SPVs in declaring all indirectly held assets through that SPV is now optional. If the taxpayer chooses not to dismantle or relinquish ownership in the SPV, the declaration is considered to be non-repatriated offshore assets for declaration purposes that is subject to the higher Redemption Money rates of 4%, 6%, and 10%.

## Your PwC Indonesia contacts:

**Abdullah Azis**

abdullah.azis@id.pwc.com

**Adi Poernomo**

adi.poernomo@id.pwc.com

**Adi Pratikto**

adi.pratikto@id.pwc.com

**Alexander Lukito**

alexander.lukito@id.pwc.com

**Ali Widodo**

ali.widodo@id.pwc.com

**Andrias Hendrik**

andrias.hendrik@id.pwc.com

**Anton Manik**

anton.a.manik@id.pwc.com

**Antonius Sanyojaya**

antonius.sanyojaya@id.pwc.com

**Ay Tjhing Phan**

ay.tjhing.phan@id.pwc.com

**Brian Arnold**

brian.arnold@id.pwc.com

**Dany Karim**

dany.karim@id.pwc.com

**Deny Unardi**

deny.unardi@id.pwc.com

**Engeline Siagian**

engeline.siagian@id.pwc.com

**Enna Budiman**

enna.budiman@id.pwc.com

**Felix MacDonogh**

felix.macdonogh@id.pwc.com

**Gadis Nurhidayah**

gadis.nurhidayah@id.pwc.com

**Gerardus Mahendra**

gerardus.mahendra@id.pwc.com

**Hanna Nggelan**

hanna.nggelan@id.pwc.com

**Hasan Chandra**

hasan.chandra@id.pwc.com

**Hendra Lie**

hendra.lie@id.pwc.com

**Hyang Augustiana**

hyang.augustiana@id.pwc.com

**Kexin Lim**

lim.kexin@id.pwc.com

**Laksmi Djuwita**

laksmi.djuwita@id.pwc.com

**Lukman Budiman**

lukman.budiman@id.pwc.com

**Mardianto**

mardianto.mardianto@id.pwc.com

**Margie Margaret**

margie.margaret@id.pwc.com

**Otto Sumaryoto**

otto.sumaryoto@id.pwc.com

**Parluhutan Simbolon**

parluhutan.simbolon@id.pwc.com

**Peter Hohtoulas**

peter.hohtoulas@id.pwc.com

**Runi Tusita**

runi.tusita@id.pwc.com

**Ryosuke R Seto**

ryosuke.r.seto@id.pwc.com

**Ryuji Sugawara**

ryuji.sugawara@id.pwc.com

**Soeryo Adjie**

soeryo.adjie@id.pwc.com

**Sutrisno Ali**

sutrisno.ali@id.pwc.com

**Suyanti Halim**

suyanti.halim@id.pwc.com

**Tim Watson**

tim.robert.watson@id.pwc.com

**Tjen She Siung**

tjen.she.siung@id.pwc.com

**Turino Suyatman**

turino.suyatman@id.pwc.com

**Yessy Anggraini**

yessy.anggraini@id.pwc.com

**Yuliana Kurniadjaja**

yuliana.kurniadjaja@id.pwc.com

**Yunita Wahadaniah**

yunita.wahadaniah@id.pwc.com



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