

# **TaxFlash**



## ***Tax Amnesty – changes to asset repatriation rules***

On 5 October 2016, the Minister of Finance (MoF) released the following regulations, which amend the existing investment rules for offshore asset repatriation:

- a) Regulation No.150/PMK.08/2016 (PMK-150) being the the second amendment to Regulation No.119/PMK.08/2016 (PMK-119) regarding the Procedures for Asset Repatriation into Indonesia and the Placement in Investment Instruments in Financial Markets; and
- b) Regulation No.151/PMK.08/2016 (PMK-151) as the amendment to Regulation No.122/PMK.08/2016 (PMK-122) regarding the Procedures for Asset Repatriation into Indonesia and the Placement in Investment Instruments in Non-Financial Markets.

The key changes stipulated in PMK-150 and PMK-151 (the PMKs) are set out below.

### **General changes affecting investment instruments in financial and non-financial markets**

#### *Addition to the forms of the repatriated offshore assets*

Previously, repatriated assets could only be in the form of cash. However, the PMKs stipulate that the repatriation can now be other than cash in the form of debt securities/*sukuk* issued by Indonesian Government or an Indonesian issuer in foreign currency in the international primary and/or secondary markets.

Debt securities are repatriated by transferring the administration from the overseas custodian to a custodian in the Perception Banks appointed as the Gateway. A the minimum three-year retention period will start from the transfer of administration.

### *Gradual cash repatriation*

The PMKs stipulate that cash repatriation can be gradual but only until the deadline set in the Tax Amnesty Law, as follows:

- 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 gradual cash repatriations, the minimum three-year retention period starts once the gradual repatriation is completed.

### *Status of cash repatriated into Indonesia after 31 December 2015*

Cash repatriated into Indonesia after 31 December 2015 may be treated differently depending on the date of repatriation:

- a) If the cash is repatriated between 31 December 2015 and 30 June 2016, the cash may be considered to be an onshore asset or a repatriated offshore asset. If a taxpayer had previously declared this cash as an offshore asset and had received the Tax Amnesty Approval (*Surat Keterangan Pengampunan Pajak/SKPP*) that included this cash as an offshore asset, the taxpayer can choose to treat this cash as an onshore asset by submitting a request letter to the DGT revising the SKPP. This revision procedure will be governed under a future DGT regulation.
- b) If the cash is repatriated after 1 July 2016, this cash is considered a repatriated offshore asset and must be invested in the prescribed investment list.

### *Others*

Investment gains from repatriated assets can be withdrawn at any time (previously withdrawals were only permitted once a year). Gains are calculated based on the investment margin of each investment type, after taking into account all investment costs.

If the investment instrument is used as loan collateral in a Gateway bank, the bank can liquidate the asset if the taxpayer is in default.

### **Changes on the rule for investment instruments in non-financial markets**

PMK-151 stipulates that investments in the real sectors prioritised by the Government and direct investments in a company in Indonesia must be in the form of capital investment in a limited liability company (*Perseoran Terbatas/PT*). The funds from this capital investment can be used by the management of the PT company in accordance with the company policy.

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