

TaxFlash



Tax audit strategy for 2017

On 28 April 2017, the Director General of Tax (DGT) issued Circular Letter No.SE-11/PJ/2017 (SE-11) that sets out tax audit plans and strategy for 2017.

The 2017 tax audits will be focused on:

1. Taxpayers that have not joined the tax amnesty;
2. Infrastructure support suppliers;
3. Digital industry (such as telecommunications, e-commerce, and internet providers);
4. Groups and affiliates;
5. Mining, plantation, and fishery industries;
6. Taxpayers that have obtained tax facilities (such as Tax Holiday and Tax Allowance), including the taxpayers granted with preliminary tax refunds;
7. Taxpayers with high tax gap based on measurable indicators as set in DGT Circular Letter regarding tax audit policy;
8. 2013, 2014, and 2015 fiscal years that are still open for tax audit; and/or
9. Other industry-based taxpayers as instructed by the Director of Tax Audit and Collection.

Nevertheless, the focus of tax audits at regional and tax service offices should also be adjusted in accordance with specific business sectors under their authority.

Outstanding tax audits that are performed based on tax audit instruction letters that were issued prior to 2017, must be concluded by 31 May 2017.

If a taxpayer that has joined the tax amnesty is tax audited for fiscal years subsequent to the tax amnesty, the tax auditor will also check specific things such as the taxpayers' treatment on the depreciation/amortisation of new assets, tax loss carry forward, and consistency between the newly disclosed net asset value and the additional retained earnings balance.

Asset tracing

As a follow-up from the tax amnesty program, SE-11 specifically stipulates that the tax office can carry out asset tracing on taxpayers that have and have not joined tax amnesty in order to identify any undisclosed assets.

If there is any asset that has not been disclosed either in Annual Income Tax Return or Tax Amnesty Declaration Letter, the tax office is authorised to carry out a special tax audit on these asset findings. This special tax audit must be concluded within 15 working days (i.e. 10 days for examination plus 5 days for closing conference). No time extension is allowed and no Quality Assurance process is available.

Developments in tax audit procedure

In addition to the tax audit strategy for 2017, the DGT has updated tax audit procedures to test taxpayers' compliance through the issue of Regulation No.PER-07/PJ/2017 (PER-07) and Circular Letter No.SE-10/PJ/2017 (SE-10). Both PER-07 and SE-10 are dated and have been effective since 21 April 2017.

These regulations introduce an initial stage of a tax audit where the taxpayer is summoned to come to the tax office to have a first meeting with the tax auditor. This summons letter is given to the taxpayers together with the tax audit instruction letter and details the schedule of this initial meeting and a list of requested documents. The meeting should be conducted at the tax office within five working days from the date of the summons letter and will be documented with an audio and visual recorder.

The meeting **must be attended** by:

- a. The representative of a corporate taxpayer, as follows:
 - management of the company;
 - a curator if the company files for bankruptcy;
 - an appointed representative if the company is in dissolution process; or
 - a liquidator if the company is in liquidation process;
- b. The concerned individual taxpayer;
- c. One of the heirs of undivided inheritance, or the executor of the testament, or the ones who take care of the assets; or
- d. The guardian of any underage children or those under guardianship.

The above taxpayers can be accompanied by their employee or tax consultant that has knowledge of the taxpayer's business activity.

During the meeting, the taxpayer is expected to bring all the requested documents in the summons letter and explain the following points:

- a. their identity;
- b. business processes;
- c. bookkeeping/recording including its documentation;
- d. information about major customers and suppliers;
- e. special transactions; or
- f. clarification between the data found by the tax auditor with the data reported in tax returns.

By the end of the meeting, the taxpayer together with the tax auditor will sign minutes of the meeting that become the basis for the tax auditor to start the tax audit at the taxpayer's premises within one month. Subsequent events after this initial meeting follow the existing tax audit procedure.

If the taxpayer does not attend the meeting on time or does not show up at all, the tax auditor will issue a statement of absence and will directly conduct the tax audit at the taxpayer's premises. Taxpayers' uncooperative actions during tax audit at their premises may lead to deemed calculation of taxable income or the tax audit being escalated to a preliminary audit of a tax crime.

Financial information access for tax purposes

On 8 May 2017, the government issued a Government Regulation In Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang*) No.1/2017 ("Perpu-1"). This regulation is issued to allow information access by the DGT from the financial institutions as well as to fulfil Indonesia's commitment to the Automatic Exchange of Financial Account Information (AEOI) which requires Indonesia to have in place a legal basis to provide financial information access for tax purposes by 30 June 2017.

Interaction with other Laws

Perpu-1 revokes several articles in other laws related to financial information access. The relevant articles are as follows:

1. Article 35(2) and 35A of General Tax Provision Law (GTPL) No. 6/1983 as lastly amended by Law No. 16/2009.
2. Article 40 and 41 of Banking Law No. 7/1992 as lastly amended by Law No. 10/1998.
3. Article 41 and 42 of Syariah Banking Law No. 21/2008.
4. Article 47 of Capital Market Law No. 8/1995.
5. Article 17, 27 and 55 of Commodity Futures Trading Law No. 32/1997 as lastly amended by Law No. 10/2011.

The revocation of articles in point (1) to (3) above eliminates the bank secrecy obligation in the event they are requested by DGT to provide information for the purpose of a tax audit, collection, and tax crime investigation of another party. It also eliminates the DGT's obligation to have written approval from the Minister of Finance (MoF) to request the information for the purpose of a tax audit, collection, and tax crime investigation. This means that the DGT now have direct access to the financial information.

The revocation of articles in point (4) and (5) essentially also eliminate the secrecy obligation by the relevant players in the capital market and commodity futures trading markets.

Scope of financial institutions

Perpu-1 allows DGT to get financial information access from financial institutions in banking, capital market, insurance, other financial service sectors, and/or other entities which are categorised as financial institutions based on international tax agreements, such as Common Reporting Standard. 'Other entities' is defined as legal person (e.g. corporation, foundation) or legal arrangement (e.g. partnership, trusts) which do not carry out business in the banking, capital market, or insurance sectors, but fall under the definition of financial institution under an international tax agreement.

Required information

The above financial institutions must submit to the DGT:

1. Reports on financial information based on the standard required under the AEOI for each reportable financial account; and
2. Reports on financial information for tax purposes.

It is worth noting that the scope above does not limit the financial information in the reporting obligation only for foreign account holders. Therefore, the coverage should also cover domestic account holders.

These reports must at least cover:

- a) Account holder identity;
- b) Account number;
- c) Financial service company identity;
- d) Balance or value of the account; and
- e) Income related to the financial account.

Other than the above reports, the DGT is allowed to request more information or evidence from financial services companies. All of this information will be used as DGT tax database.

Identification procedures for AEOI requirements

For the reporting of financial information as required under AEOI, the financial services must perform an identification process to verify the tax domicile of the account holder and to verify that the account holder, the financial account, and the controlling person are reportable under the international tax agreement standard. This identification procedure must be documented, and may be required to be translated into Bahasa Indonesia if requested by the DGT. The financial institutions must not perform new account opening or new transactions for pre-existing accounts if the account holder refuses to cooperate in the identification process.

Submission mechanism and deadline

The reporting for AEOI purposes as in point (a) above is submitted electronically to Financial Services Authority (*Otoritas Jasa Keuangan/OJK*). Electronic reporting to OJK must be submitted at the latest 60 days prior to the deadline for AEOI reporting, whilst OJK must submit the reports to the DGT at the latest 30 days prior to the same deadline. If the electronic reporting mechanism is not yet available, it is submitted manually to the DGT, within four months after the calendar year, i.e. 30 April of the following year.

Other reporting as in point (b) above is submitted manually to the DGT in the case electronic reporting mechanism is not yet available. The reporting deadline is four months after the calendar year, i.e. 30 April of the following year.

Protection against prosecution

The MoF and the MoF employees are protected from criminal or civil prosecution while carrying out the access and exchange of financial information for tax purposes. This protection is also applicable for the head and employees of OJK and the heads and employees of financial institutions while fulfilling their reporting obligation.

Sanctions

The heads and employees of the financial institutions who do not submit the reports, do not properly conduct the identification procedures, or do not provide information/ evidence requested by the DGT, will be subject to criminal sanction of one year confinement or a fine of maximum IDR 1,000,000,000, while the financial services companies will also be subject to criminal fine of maximum IDR 1,000,000,000. Any person who provides false statements or withhold information required under the reporting obligation will also be subject to criminal sanction of one year confinement or a fine of maximum IDR 1,000,000,000.

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