

TaxFlash



Financial information access – technical guidance

The Minister of Finance (MoF) has issued Regulation No.70/PMK.03/2017 (PMK-70) as a technical guidance to implement the financial information access for tax purposes. PMK-70 is issued based on Government Regulation In Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang*) No.1/2017 (“Perpu-1”) that allows the Director General of Tax (DGT) to access information from Financial Institutions (FIs) as well as to fulfil Indonesia’s commitment to the Automatic Exchange of Financial Account Information. Please refer to our TaxFlash No.06/2017 for our discussion on Perpu-1.

PMK-70 is dated and has been effective since 2 June 2017 and revokes several articles in other regulations related to financial information access. The relevant articles are as follows:

1. Article 1(3)(b) of MoF Regulation No.87/PMK.03/2013 regarding procedure to request information from parties bound by secrecy obligation; and
2. Article 6 of MoF Regulation No.39/PMK.03/2017 regarding Exchange of Information (EOI) procedures based on international agreements.

Any ongoing DGT requests on financial information that are still pending for approval from the Head of Financial Services Authority (*Otoritas Jasa Keuangan/OJK*) should be concluded based on PMK-70.

Definitions of Financial Accounts

Financial Account is an account maintained by a FI that covers accounts for banks, securities accounts for brokers and custodian banks, insurance contracts for life insurance companies, and/or other financial assets for other FIs.

A. Financial information access to implement international agreements

The main purpose to open the DGT access to financial information is for Indonesia to implement its commitment in international tax agreements and to comply with the Automatic Exchange of Financial Account Information.

Reporting Financial Institutions

Reporting FIs are defined as:

1. Depository Institutions that generally includes saving banks, commercial banks, savings and loan associations and credit unions
2. Custodial Institutions whose main business is managing financial assets for other parties
3. Investment Entities that generally includes Entities investing, reinvesting or trading in financial instruments, portfolio management or investing, administering or managing Financial Assets
4. Specified Insurance companies that covers insurance contracts with cash value or annuity payments.

The following FIs are specifically excluded from being required to report information due to posing a low risk of being used to evade tax:

1. Non-commercial Governmental Entities
2. Non-commercial International Organisations
3. Non-commercial Central Banks
4. Certain Retirement Funds
5. Qualified Credit Card Issuers
6. Exempt Collective Investment Vehicles
7. Trustee Documented Trusts, i.e. trusts whose trustee is a Reporting FI
8. Other low-risk FIs

Both Reporting and Non-Reporting FIs must register to the DGT the status of their classification based on their own self-assessment. The Reporting FIs must also attach the list of non-reportable Financial Accounts upon their registration application. The registration must be done at the latest by the end of the second month of the following year upon fulfilling the classification status. The DGT will assess the applications and may deem on ex-officio basis if a FI fail to register or register as Non-Reporting FI but actually fulfilling Reporting criteria.

Reportable Financial Accounts

Financial Accounts that must be reported are those Financial Accounts owned by:

- one or more individuals or entities that must be reported; or
- passive non-financial entities whereby one or more of the controller is an individual that must be reported.

Individuals or Entities that must be reported are those individuals or entities which reside in the destination jurisdiction for reporting purposes, except:

1. Companies whose shares are traded in one or more stock exchange, and their affiliated entities
2. Governmental Entities
3. International Organisations
4. Central Banks
5. Certain Financial Institutions

Reporting procedures

These reports must at least cover:

1. Account holder identity;
2. Account number;
3. Financial service company identity;
4. Balance or value of the account; and
5. Income related to the financial account, such as interest income from a bank account,

Reporting Financial Institutions in the sector of banking, capital markets, and insurance, must submit reports on financial information to the DGT via OJK while other Reporting Financial Institutions should submit the reports directly to the DGT. The first reporting will be in 2018 that covers financial information up to 31 December 2017.

Pre-existing Entity Accounts that have an aggregate account balance or value of USD 250,000 are excluded from reporting obligations. Financial Institutions should still submit nil reports if there are no reportable accounts during the year.

Identification procedures

From 1 July 2017, 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 that at least cover: self-certification, documentary evidence (including Certificate of Domicile from the authorised government body in the domicile country), data related to Financial Accounts, and the financial information itself. This documentation should be maintained for five years at the minimum and may be required to be translated into Bahasa Indonesia if requested by the DGT.

Other provisions

Reporting FIs may engage external service providers to fulfil reporting obligations and identification procedures, where the responsibility still lies in the hand of the Reporting FIs.

The financial institutions must not open New Accounts or carry out new transactions for Pre-existing Accounts if the account holder refuses to cooperate in the identification process.

DGT Announcement

The DGT will make public announcements on its official website which will include a:

1. list of Participating Jurisdictions;
2. list of Destination Jurisdictions for Reporting;
3. list of Non-Reporting Financial Institutions; and
4. list of Financial Accounts that are excluded for reporting purposes.

B. Financial information access for tax purposes

Perpu-1 allows the DGT to access financial information for tax purposes, such as for monitoring and tax audit purposes. Registration and reporting procedures are generally similar with the ones performed to fulfil international tax agreements.

Financial Accounts that are subject to this provision should fulfil the following conditions. They should be:

1. Owned by:
 - a) Indonesian individuals reside in Indonesia;
 - b) Foreigners residing in Indonesia other than those already included in section A above; or
 - c) Entities domiciled in Indonesia.
2. The account balance or value as of 31 December per each reporting year should have:
 - a) Financial Accounts maintained by banks:
 - owned by individuals (minimum IDR 1 billion); or
 - owned by entities (no minimum value).
 - b) Financial Accounts maintained by life insurance companies:
 - owned by individuals or entities (no minimum value, but limited to sum insured of minimum IDR 1 billion).
 - c) Financial Accounts maintained by cooperative:
 - owned by individuals or entities (minimum IDR 1 billion)

- d) Financial Accounts maintained by capital markets and commodity futures trading:
- owned by individuals or entities (no minimum value).

The value of IDR 1 billion is based on the MoF Press Release No.21/KLI/2017 that was recently announced on 7 June 2017. This Press Release amends the original threshold of IDR 200 million as stipulated in PMK-70. A new MoF Regulation will be issued to accommodate these changes.

Sanctions

The DGT may request for clarification to a Financial Institution if there is an indication that the identification and documentation procedures have not been properly conducted, providing false statements, or have withheld information required under reporting obligations. The DGT will issue a warning letter if within 14 days upon receiving the clarification request, the Financial Institution has not provided clarification or has not completely answered the request.

Within 14 days upon receiving the warning letter, the DGT may undertake a tax audit on preliminary evidence of a tax crime if it is found out that the Financial Institution is indicated of still conducting an offense, does not submit the reports, or does not provide information/evidence requested by the DGT. If the above indication is verified, the tax audit will be escalated to be an investigation in order to impose criminal sanctions as regulated in Article 7 of Perpu-1.

New Certificate of Domicile for Indonesian tax residents

The DGT has stipulated a new standard on Certificate of Domicile (CoD) for Indonesian tax residents through the issue of Regulation No.PER-08/PJ/2017 (PER-08) on 12 May 2017. PER-08 revokes DGT Regulation No.PER-35/PJ/2010 (PER-35).

The new CoD format adds information to the offshore counterpart as part of the statement that validate the residency of an Indonesian taxpayer when entering into a transaction with the said offshore counterpart in a certain tax period, except for Indonesian banks, capital markets, insurance, pension funds, leasing, and other financial services (collectively referred to as “Financial Services”). On top of the necessity in the CoD to put information of the offshore counterpart, the Indonesian tax resident should also specify transaction information, including the transaction value, with the said offshore counterpart in its CoD application letter.

CoD is valid for 12 months after the issuance date. However, for Financial Services, the validity is 36 months after the issuance date.

In order to obtain CoD, an Indonesian tax resident should submit an application along with mandatory attachments to the tax office where it is registered. A CoD application can be made for:

1. Current tax year or tax period, where the taxpayer must:
 - have submitted the latest Article 25 Monthly Tax Return or the 1% Article 4(2) Final Tax Return that is due upon applying for CoD.
2. Prior tax years as long as they have not passed the statute of limitation, where the taxpayer must:
 - have submitted the latest Article 25 Monthly Tax Return or the 1% Article 4(2) Final Tax Return if the CoD application is submitted prior the deadline to submit Annual Income Tax Return (AITR);
 - have submitted AITR-extension if the CoD application is submitted after the deadline to submit AITR; or
 - have submitted AITR.

The tax office must issue a Decision within ten working days upon the receipt of complete CoD application (previously five working days).

Any ongoing CoD applications in place prior 12 May 2017 should be concluded based on PER-35. Valid CoDs based on PER-35 are still applicable up to the end of the validity period.

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