# TaxFlash

## *Enforcement of Tax Amnesty Rules*

On 11 September 2017, the government issued Government Regulation No.36/2017 (GR-36) as a further implementing regulation to the Tax Amnesty Law (TA). GR-36 provides rules on the tax imposte applying to certain "additional" net assets which are deemed to have not been properly disclosed/managed pursuant to the TA program and therefore will be treated as income.

The "additional" net assets falling within GR-36 are determined as follows:-

*For taxpayers who joined the TA program*

In this scenario the tax exposure arises as follows:-

**Scenario A**

Where there were "additional" net assets declared in a TA Declaration Letter (*Surat Pernyataan Harta untuk Pengampunan Pajak/SPHPP*) (and so are subject to Redemption Money at, for instance, the 2% rate) but the declaring taxpayer:-

a) *for domestic "additional" net assets*:-failed to retain the assets in Indonesia for three years; or
b) *for foreign "additional" net assets*:- either:-
   - failed to repatriate the assets during the TA program (i.e. by 31 December 2016 or 31 March 2017); or
   - did repatriate but failed to properly invest the assets in Indonesia for three years.

In these circumstances, the entire value of the "additional" net assets will constitute the "tax imposition base" and be subject to a final income tax (see below).

This provision thereby operates such that, if a taxpayer declared (say) domestic "additional" net assets of IDR 10bn, but there were transfers offshore of IDR 1 billion within three years, then the entire IDR10bn would constitute the tax imposition base;

**Scenario B**

Where there is "information" in relation to "additional" net assets which were not declared in the relevant SPHPP. Situations in which this information is deemed to arise include (but are not limited to):-

a) where the net assets' movement reported in an Annual Income Tax Return (AITR) for the period immediately prior to the TA (generally the 31 December 2015 return), and filed after the TA (i.e. 1 July 2016) and onwards, is not reconciled to the net income plus additional capital declared in that AITR.

   For instance, if a taxpayer submits its 31 December 2015 AITR in August 2016 showing a net income of IDR 3bn and additional capital of IDR 2bn, then the additional net assets in 2015 should be IDR 5bn. However, if the net assets' movement between the 2014 and 2015 AITRs is IDR 7bn, then the discrepancy of IDR 2bn will be treated as "additional net assets" and so also represent the tax imposition base; or

b) where the Directorate General of Tax (DGT) indicated that there were undeclared net assets relating to a SPHPP as filed and the DGT then issued a revised Tax Amnesty Approval Letter (*Surat Keterangan Pengampunan Pajak/SKPP*) for which the additional Redemption Money remains outstanding.

   Note that the "additional" net assets can be deemed to arise simply when the DGT determines that an increase in additional net assets also means that the relevant Redemption Money rate actually used by the taxpayer was too low.

   For instance, if the DGT issues a revised SKPP increasing the Redemption Money rate from (say) 0.5% to 2%, then the SKPP will be treated as deeming a similar increase in underreported assets (i.e. by a multiple of four in this case).

In any scenario relating to undeclared assets, the "additional" net assets will be treated as still being owned by the taxpayer at the end of the fiscal year prior to the TA. The final income tax due will also be subject to a 200% sanction.

*For taxpayers who did not join the TA program*

This scenario covers taxpayers who did not submit a SPHPP but the DGT, before 2019, obtains information in relation to the existence of "additional" net assets acquired between 1 January 1985 to 31 December 2015.

In this case, the "additional" net assets are treated as still being owned by the taxpayer at the end of the fiscal year immediately prior to the TA (generally 31 December 2015) and to have also not have been reported in the AITR immediately prior to the issuance of the tax audit instruction letter.

## *Tax Rates*

The tax to be applied is levied pursuant to Article 4(2) of the Income Tax Law and, as such, constitutes a final tax. The actual liability is calculated by applying the relevant tax rate against the "income tax imposition base" as follows:-

a) for corporate taxpayers-@25%

b) for individual taxpayers-@30%

c) for "certain" other taxpayers-@12.5% with certain taxpayers being those with:-
   i) gross income from business and/or freelance jobs in the fiscal year prior to the TA of up to IDR 4.8bn; or
   ii) gross income other than i) (i.e. other income) in the fiscal year prior to the TA of up to IDR 632mn; or
   iii) gross income from business, freelance jobs or other income in the fiscal year prior to TA of up to IDR 4.8bn with the other income maximum being IDR 632mn.

   In addition, one of the following must be available to support the gross income:-
   i) for "certain" taxpayers who joined the TA program:-
      A. the last AITR prior to the TA; or
      B. the Statement Letter regarding gross turnover as attached to the SPHPP; or
      C. a Statement Letter regarding gross turnover*;

ii) for taxpayers who did not join the TA program:-
   A. a tax assessment/decision letter for Income Tax for the fiscal year prior to the TA and prior to any tax audit instruction letter to assessment of the deemed income under GR-36;
   B. the AITR filed immediately prior to the TA if no assessment has issued for the fiscal year prior to the TA; or
   C. a Statement Letter regarding the gross turnover*.

   *accepted only if the DGT has no other data.

### *Value of Net Assets*

The value of the net assets at the end of the fiscal year immediately prior to the TA will be based on:-

a) for cash amounts – the nominal value; or
b) for non-cash amounts – pursuant to a valuation performed by the DGT

### *Year in which tax imposition base arises*

The tax imposition base, and therefore the final income tax liability, arises as follows:

a) *for additional net assets outlined in TA Program Scenario A) above*:- at the end of the 2016 fiscal year;
b) *for net assets outlined in TA Program Scenario B.b) above*:- upon the issuance of the adjustment pursuant to a Revision of the relevant SKPP;
c) *in all other cases*:- upon the issuance of the tax audit instruction letter to assess the deemed income under GR-36.

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