

TaxFlash



Voluntary declaration form

Article 44A of the Minister of Finance (MoF) Regulation No.165/PMK.03/2017 (PMK-165) stipulates that a voluntary declaration of previously-undeclared assets in a Tax Amnesty Declaration Letter (*Surat Pernyataan Harta untuk Pengampunan Pajak/SPHPP*) or Annual Income Tax Return should be submitted using a specific tax return form. To implement this provision, the Director General of Tax (DGT) issued Regulation No.PER-23/PJ/2017 (PER-23) on 20 November 2017 that provides a [new monthly final tax return](#) as a standard form for this voluntary declaration along with the submission requirements.

The format of the tax return attachment is similar to the attachment for the SPHPP. Therefore, the information and documents required for this final tax return are also similar to the requirements for the SPHPP.

As regulated in PMK-165, taxpayers can use a value determined by a licensed appraiser or they can request the DGT to do a valuation if there is no reference to determine the asset value. For those taxpayers that apply for DGT valuation, the voluntary declaration should be submitted within one month after the DGT valuation result, otherwise it will be deemed as additional income that is subject to final tax as well as the penalties provided for in the prevailing laws.

The submission date of the voluntary declaration represents the acquisition date of the newly declared assets and liabilities.

The DGT may assess the correctness of the submitted voluntary declaration. If the DGT finds that there is a shortage of payment in the taxpayer's calculation, the DGT may deem the tax underpayment as additional income that is subject to final tax as well as the penalties provided for in the prevailing laws.

New final tax rules on land and/or building rental

The Government issued Regulation No.34/2017 (GR-34) on 11 September 2017 that governs income tax on land and/or building rental. GR-34 will be effective starting 2 January 2018 and revokes the existing GRs dealing with covering this taxation (i.e. GR No.29/1996 (GR-29) as amended by GR No.5/2002).

Similar to the previous GRs, gross income from land and/or building rental is subject to Article 4(2) Final Tax at 10%.

GR-34 updates some provisions to expand the scope of taxation and provide a more detailed example of income covered under this regulation.

The key changes in GR-34 are set out below.

Definition of 'building'

GR-34 defines 'building' as a technical construction that is permanently built or attached on land and/or waters, which is adopted from the definition under the Land and/or Building Tax Law. Therefore, the scope of GR-34 now goes beyond residential and commercial building rental. It will now cover other constructions such as telecommunication towers and tanks.

Income from the rental of these other constructions will be subject to the following income tax treatment:

1. Income from ongoing rental for which the rental agreement and rental period had already started prior to 2 January 2018 is subject to 2% Article 23 Withholding Tax (WHT) on asset rental and normal income tax throughout the agreement period. Any addendum made after 2 January 2018 will be subject to GR-34.
2. Income from advance payment made prior 2 January 2018 on a rental agreement entered into prior to 2 January 2018 but where the rental period started after 2 January 2018 is subject to 2% Article 23 WHT on asset rental and normal income tax. Payment made after 2 January 2018 will be subject to GR-34.

This final tax is applicable to building rental in full or in part (i.e. an inner or outer part of the building such as terrace, swimming pool, etc).

Scope

Other income deemed as rental income

Income from land and/or building rental under GR-34 now includes all amount paid or payable by tenants by whatever name and in whatever form, including maintenance cost, security cost, service charge, and other facilities, whether agreed under a single agreement or in separate agreements.

Build Operate Transfer ("BOT" or *Bangun Guna Serah*)

GR-34 now covers the income received by land owners from investors in relation to a BOT arrangement.

BOT is defined as a cooperation agreement between a land owner and investor, where the land owner will grant rights for the investor to construct building during the agreement period which will then be transferred to the land owner after being operated by the investor or prior to the operation period.

The land owner income that is subject to 10% final tax under this regulation is as follows:

1. Periodic payment received during the BOT period
2. Building transferred prior to the end of the BOT period
3. Building transferred at the end of the BOT period
4. Other income in relation to BOT, including revenue sharing from building operation and penalties stipulated in the BOT agreement

The tax imposition base for the transactions under (2) and (3) is the building value that is based on the market value or sale value of the tax object for Land and/or Building Tax purposes (*Nilai Jual Objek Pajak*), whichever is higher.

Taxation on BOT activities is currently regulated under MoF Decree No.248/KMK.04/1995 (KMK-248) and DGT Circular Letter No.SE-38/PJ.4/1995 (SE-38).

As GR-34 only regulates taxation on the income received by the land owner, the income of the BOT investor would still follow KMK-248 and SE-38.

As a transition, land owner income from ongoing BOT agreements that started prior to 2 January 2018 is subject to the following income tax treatment:

1. Periodic payment and other income obtained during the agreement period are subject to tax in accordance with KMK-248 and SE-38.
2. Buildings transferred to the land owner after 2 January 2018 is subject to tax according to GR-34.

Exclusion

As per previous GRs, income from lodging services is excluded from this taxation. Examples of income under this category of lodging services are student dormitories and employee messes.

Examination of final tax payment on the transfer of land and/or building rights

On 2 November 2017, the DGT issued Regulation No.PER-18/PJ/2017 (PER-18) that governs the examination of the fulfilment of tax obligations in relation to the transfer of land and/or building rights. PER-18 revokes DGT Regulation No.PER-26/PJ/2010 and serves as an implementing regulation of MoF regulations regarding the transfer of land and/or building rights and Real Estate Investment Funds.

Taxpayers that transfer their land and/or building rights or enter into a Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli*) must apply to the tax office for an examination of the Article 4(2) Final Tax paid for the above transaction.

The tax office will first conduct a formal examination to check the completeness of the application. An approval letter will be issued within three days if the application satisfies the requirements. A notary can sign the deed of transfer after the issue of this approval letter.

The tax office can conduct a material examination any time after the date of transaction by:

1. Verifying the actual location and size of the property.
2. Verifying the transfer value based on actual proof of payment for transaction between non-related parties.
3. Verifying whether the transfer value is arm's length for transaction between related parties.

The tax office will collect any tax underpayment that may be incurred from this material examination result. If the taxpayer disagrees with the tax underpayment, the tax office will escalate this process to a tax audit.

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