TaxFlash

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New Foreign Tax Credit Rules

On 31 December 2018, the Minister of Finance (MoF) issued Regulation No.192/PMK.03/2018 (PMK-192) to stipulate the updated rules for claiming a Foreign Tax Credit (FTC), which is applicable starting in fiscal year 2018. PMK-192 revokes Minister of Finance (MoF) Decree No.164/KMK.03/2002 (KMK-164).

The main concept of claiming a FTC under PMK-192 is still in line with KMK-164. However, PMK-192 provides more guidance on certain areas that were not covered under KMK-164. We highlight below the key changes and additional guidance provided under PMK-192.

1. Trust

PMK-192 introduces the concept of Trust under FTC rules, which allows taxpayers to claim a FTC for their income that is derived from Trusts although the tax credit may be under the name of the Trust and not the taxpayer himself.

A Trust is defined as a scheme, arrangement, or relationship based on written agreement between an individual/entity acting as a founder and an individual/entity acting as a title holder of an asset with an obligation to manage such asset for the benefit of the beneficiaries.

The determination of the source country for Trusts is based on the country where the Trust is formed or established.

2. Combination of foreign income and timing of income recognition

The foreign income to be combined and the related timing are as follows:

Type of foreign income	Income to be combined	Timing of income recognition
Income from business activities, including from a branch or a representative office (RO)	Net income	Fiscal year when the income is earned
Income from Trusts	Net income or taxpayer's portion of the net income	• If taxed at Trust level - Fiscal year when the income is earned • If not taxed at Trust level - Fiscal year when the income is earned or received, whichever is earlier
Other income	Net income	Fiscal year when the income is received

3. Netting-off of foreign losses

Foreign losses are generally not deductible for Indonesia tax purposes. The example given in PMK-192 clarifies that this includes netting-off of foreign losses with income derived from the same country.

However, another example in PMK-192 also clarifies that if the foreign loss is derived from assets or activities that are effectively connected to the foreign branch or RO, it can be netted-off with the net income of the branch or RO.

4. FTC calculation and limit

Determining the allowable amount

Under KMK-164, the allowable FTC amount is either the actually due/paid amount or the amount calculated based on the FTC rules (Certain Amount), whichever is lower.

PMK-192 put an additional lower limit based on the applicable Tax Treaty rate. If the Tax Treaty stipulates that the taxing right of an income is only in Indonesia, any FTC for such income is not creditable.

Therefore, there are now three amounts, i.e. actual FTC amount, Certain Amount, and Tax Treaty rate, to be considered when determining the lowest amount to determine the allowable FTC amount. As in KMK-164, and in the case that the total tax due (after combining the foreign income) in Indonesia is lower than the lowest FTC amount, the allowable FTC amount is limited only up to the total tax due in Indonesia. This may happen in the case the domestic portion of the tax calculation shows a loss.

Calculating Certain Amount – by country and by type of income
Under KMK-164, the Certain Amount is calculated by total income per country based on the ratio of foreign income and total net income, then multiplied by the total tax due in Indonesia. Under PMK-192, the Certain Amount is calculated by the type of income per country.

Exchange rate
For general taxpayers, the exchange rate to convert the allowable FTC amount into Rupiah is based on the exchange rate issued by MoF Decree for the date when the FTC is due/paid/withheld abroad.

For taxpayers using USD bookkeeping, the conversion into USD is based on the Bank Indonesia (BI) middle rate or, if the BI middle rate is not available, taxpayers can use the daily foreign exchange spot rate at the international market.

FTC for Trusts
- If the income is taxed at the Trust level, the actual FTC amount is based on the income tax or taxpayer's portion of the income tax.
- If the income is not taxed at the Trust level, the actual FTC amount is based on the income tax on the taxpayer's portion of the income.

5. Supporting documents for claiming FTC

PMK-192 provides more flexibility for the supporting document required to claim FTC. The supporting document can be in the form of a copy of foreign tax payment slip, withholding tax slip, or any other evidence of tax payment or withholding states the name of the taxpayer and the amount of foreign tax. If the FTC is derived from foreign branch, RO, or Trust income, the supporting document can be replaced with the Annual Income Tax Return (AITR) of the branch, RO, or Trust.

6. Scope exclusion

PMK-192 excludes a FTC mechanism for deemed dividends under the Controlled Foreign Company (CFC) rules, as it is already governed separately under the CFC rules.

Update on the use of tax book value on the transfer of assets for business expansion

Taxpayers may use tax book value on the transfer of assets for business mergers, consolidation, expansion, or acquisition. The Minister of Finance (MoF) has recently issued Regulation No.205/PMK.010/2018 (PMK-205) on 31 December 2018 to update provisions for business expansion. PMK-205 served as an amendment to the MoF Regulation No. 52/PMK.010/2017 (PMK-52) regarding the use of tax book value for mergers, consolidation, expansion, and acquisition.

PMK-205 adds two types of taxpayers that are eligible to use tax book value on the transfer of assets for business expansion:

a) Indonesian company, provided that the entity resulting from the expansion receives at least IDR 500 billion of additional capital from a foreign investor; and

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b) State Owned Enterprises (*Badan Usaha Milik Negara* or SOEs) that receive additional capital from the Government, as long as the expansion is carried out to set up an SOEs Holding Company.

PMK-205 also updates the list of documents required to apply for this tax facility, whereby:

a) Taxpayers under point (a) above are required to provide a Deed of Establishment or Amendment of the Indonesian company resulting from the expansion. This document should include the amount of new capital from foreign investor;
b) Taxpayers under point (b) above are required to provide a Recommendation Letter from the Minister of SOEs.

Provisions on other related procedures remain the same.

Tax treatment of certain e-commerce transactions

At the end of December 2018, the Minister of Finance issued Regulation No.210/PMK.010/2018 (PMK-210) regarding tax arrangements relevant to certain e-commerce activities. PMK-210 is to be effective starting 1 April 2019.

As readers would be aware, e-commerce transactions carried out within Indonesia's Customs Area can be carried out either through "online marketplaces" or "non-marketplaces" (being online retail, classified ads, daily deals, and social media). PMK-210 focuses on the tax treatment related to online marketplaces.

Online marketplace providers covered in PMK-210 include individuals, companies, and permanent establishments carrying business activities in Indonesia through an online marketplace platform. PMK-210 specifically includes transportation "apps" operating in Indonesia as one type of online marketplace provider.

Note that PMK-210 does not extend to e-commerce transactions carried out directly between a foreign seller and an Indonesian buyer where this is not through an Indonesian online marketplace. In the case where goods traded on an Indonesian online marketplace originate from overseas, PMK-210 is silent on the requirement for offshore sellers to be registered for tax purposes in Indonesia.

No new taxes are being introduced with PMK-210. Instead PMK-210 highlights how these "e-commerce transactions" are subject to the prevailing tax regulations in Indonesia. PMK-210 does however empower the Director General of Tax (DGT) to obtain information from online marketplace providers on transactions made via these platforms. This is stated as being to provide a level of playing field between these different online platforms.

The tax compliance obligations of Indonesian online marketplace providers are outlined below. These are mainly following existing rules, unless highlighted as new.

1. Administrative obligations:
   a) to obtain a Tax ID;
   b) to be registered as a VATable Entrepreneur (*Pengusaha Kena Pajak/PKP*). However, PMK-210 imposes this obligation although the online marketplace provider falls under small entrepreneur category for VAT purposes (new);
   c) to report the total e-commerce transactions in the marketplace by way of a special report to be attached to the monthly VAT Return (new).

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2. Tax obligations:
    a) To collect VAT on the following:
        i) the provision of marketplace services to parties utilising the online marketplace;
        ii) the delivery of goods or services made on their own account in the marketplace; and/or
        iii) other deliveries.
    b) To comply with relevant income tax obligations.

The tax compliance obligations of sellers utilising an online marketplace are as follows.

1. Administrative obligations:
    a) To provide their Tax ID to the online marketplace provider. If the seller does not have a Tax ID then the seller should:
        i) register for a Tax ID through an electronic registration system provided by the DGT or the online marketplace provider (new); or
        ii) to provide its Indonesian Resident ID to the online marketplace provider (for local sellers only) (new).
    b) To register as a PKP if total transactions exceed IDR 4.8 billion per annum (note small entrepreneurs may still opt to be registered as a PKP).
2. Tax obligations:
    a) once registered as a PKP, to complete all VAT and/or LST obligations including collecting VAT and/or LST on deliveries of taxable goods or services through the online marketplace;
    b) to comply with all relevant income tax obligations. As mentioned in the DGT Press Release, this includes that sellers may be subject to final tax deemed at 0.5% of the gross income if turnover is less than IDR 4.8 billion per annum (although this is not specified in PMK-210).

If the goods traded in the Indonesian online marketplace originate from overseas, the Indonesian online marketplace providers should seek Director General of Customs and Excise (DGCE) approval prior to importing the associated goods and to submit an e-invoice on every import. DGCE approvals may be frozen if online marketplace providers do not fulfil their import tax obligations. In more serious situations the DGCE may revoke import approvals.

The following provisions in PMK-210 will be further detailed in specific DGT or DGCE regulations:

1. the Tax ID registration system to be provided to sellers by online marketplace providers;
2. the mandatory marketplace report on total e-commerce transactions (i.e. to be attached to the monthly VAT Return); and
3. the procedures related to the import of goods sold via an online marketplace.

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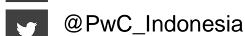

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