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Tax Allowance – an update

The Ministry of Finance (MoF) has issued Regulation No.11/PMK.010/2020 (PMK-11), dated and effective since 11 February 2020. This regulation provides technical guidance on the Tax Allowance facilities available for companies that invest in certain designated business sectors and/or regions based on Government Regulation No.78/2019 (GR-78), which has been effective since 13 December 2019. Please refer to our [TaxFlash No.18/2019](#) for a discussion of GR-78.

PMK-11 replaced MoF Regulation No.89/PMK.010/2015 (PMK-89), which served as the implementing regulation of Government Regulation No.18 Year 2015 (GR-18) as amended by Government Regulation No.9 Year 2016 (GR-9), which was replaced by GR-78. The content of PMK-11 is similar to PMK-89, and stipulates the administrative procedures to obtain the incentive, including—but not limited to procedures regarding applications to enjoy income tax facilities, utilisation of facilities, reporting obligations, asset replacement, etc. Under PMK-11, the application is made through the Online Single Submission (OSS) system. Certain provisions are elaborated further in PMK-11, such as the asset replacement procedure, which we will discuss below.

Asset replacement

As you may be aware, the tax facilities provided by the Tax Allowance are as follows:

1. A reduction in net taxable income of 30% of the amount invested in the form of tangible fixed assets (including land), prorated at 5% for six years of commercial production, provided that the assets invested in are not being misused or transferred out within a certain period, except to be replaced with new assets;
2. Acceleration of fiscal depreciation and amortisation deductions;
3. A reduction of the withholding tax rate on dividends paid to non-residents to 10% or the applicable reduced tax treaty rate; and
4. An extension of the tax-loss carry forward period of more than five years but not more than 10 years.

In the case of tangible fixed asset replacement, a taxpayer must submit a written notification to the Directorate General of Taxation (DGT) prior to carrying out a fixed asset replacement.

There are two calculations that will be impacted if the value of a replacement asset is different from the initial asset.

1. Depreciation

The depreciation of an asset after the replacement is based on the acquisition cost of the new fixed asset.

2. The basis for calculating the net income deduction facility of 5% per year

The basis for calculating the deduction facility depends on the timing and cost value of the replacement asset, as follows:

- if the fixed asset replacement occurs before commercial production, the calculation base is the acquisition cost of new fixed asset
- if the fixed asset replacement occurs after commercial production, the calculation base is the lower of the acquisition cost of the new fixed asset or of the initial fixed asset.

The newly replaced tangible fixed asset cannot enjoy the accelerated depreciation facility.

Transitional provisions

Applications made to the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal/BKPM*):

- based on GR-18 jo. GR-9 and prior to the enforcement of GR-78; or
 - based on GR-78 but prior to the enforcement of PMK-11
- will be processed based on the PMK-89.

A Tax Allowance facility may be granted based on PMK-11:

- for taxpayer whose principle permit, investment permit, or Capital Investment registration are issued by BKPM after the enforcement of GR-18 jo. GR-9 and prior to the enforcement of GR-78; or
- the business permit is issued by the OSS Agency prior to the enforcement of GR-78

as long as:

- ✓ the permits have never been issued a decision on approval or rejection of Tax Allowance facility based on the GR-18 jo. GR-9;
- ✓ the Business Fields/Region are listed in the Attachment I or II of GR-78;
- ✓ taxpayer has fulfilled the eligibility criteria and requirements in GR-78;
- ✓ the request for Tax Allowance facility is submitted prior to the Beginning of Commercial Production; and
- ✓ the application is submitted no later than one year after the GR-78 becomes effective.

The format of the corresponding documents are set out in PMK-11.

Indonesia – Tajikistan tax treaty comes into force

The tax treaty between Indonesia and Tajikistan was signed on 28 October 2003 and was ratified by Presidential Regulation No.76 Year 2019 on 12 November 2019. The sending of diplomatic notes from Indonesia to Tajikistan on 13 December 2019 marked the entry into force of this tax treaty. The DGT subsequently issued Circular Letter No.SE-03/PJ/2020 on 24 January 2020 to announce that the tax treaty had entered into force and affected income paid or credited on or after 1 January 2020.

The tax treaty stipulates that dividends and royalties are taxable at 10%. Interest is taxable at a maximum rate of 10%. Only the beneficial owners of such income are acknowledged as the parties that are entitled to the tax treaty benefits.

The Branch Profit Tax rate is 10%. This rate is not applicable for production sharing contracts in the oil and gas sector concluded by the Indonesian Government, its government bodies, state-owned oil and gas companies or other entities with persons or entities that are Tajikistan residents.

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