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Tax rate reduction for public companies – additional rules

Under recent tax law changes, the Corporate Income Tax (CIT) rate for publicly listed companies with at least 40% of their paid-in shares listed on the Indonesia Stock Exchange will be reduced by an additional 3% (i.e. the CIT rate will become 19% for fiscal year 2020-2021 and 17% starting in fiscal year 2022).

In the law, it was stipulated that these reduced rates will only be available if certain conditions are met (to follow under regulation).

On 19 June 2020, the Government issued Regulation No. 30 Year 2020 (GR-30) to stipulate these additional conditions.

Some of the requirements stipulated in GR-30 are similar to previous rules, and can be summarised as follows:

- a. The minimum 40% of required listed shares must be owned by a minimum of 300 shareholders;
- b. Each of those shareholders may only own less than 5% of the entire issued and fully paid-up shares;
- c. The provisions as intended above must be met for at least 183 calendar days within one fiscal year; and
- d. The fulfilment of these requirements is to be confirmed by submitting a report to the Directorate General of Taxes (DGT).

GR-30 sets out some new provisions which regulate how to apply the numerical fulfilment of the requirements mentioned in points (a) and (b). For purposes of calculating the numbers, the following shares will not be included in complying with the numbers:

- 1) Shares owned by related parties of the listed company, if they are considered to have a “special relationship” under the Income Tax Law or Capital Markets Law; or
- 2) Treasury shares held by the listed company (for companies that buy back their shares).

However, we note the shares mentioned in item 2 above (treasury shares) will not be excluded from the calculation in case they meet the requirements of the recently issued GR-29. Please see our [TaxFlash No.25/2020](#) for more information on this point.

Transitional provision

As GR-30 is applicable starting 19 June 2020, the requirements used as a basis for calculating the qualifying 183 days in a fiscal year is based on:

- Government Regulation No. 77 Year 2013, as lastly amended by Government Regulation No. 56 Year 2015 (GR-56) from the beginning of the 2020 fiscal year until 18 June 2020.
- GR-30 from 19 June 2020 until the end of the 2020 fiscal year.

For 2019 and prior years' CIT Returns (including their amendments), the requirements are based on GR-56.

Income Tax treatment on scholarship and non-profit organisation for education and R&D

On 16 June 2020, the Ministry of Finance (MoF) issued Regulation No.68/PMK.03/2020 (PMK-68) in order to improve the quality of human resources in Indonesia, to create better education and encourage research and development (R&D).

PMK-68 updates and combines two main topics which were previously governed under two separate MoF regulations, namely:

- 1) Scholarship were previously regulated in the MoF Regulation No.246/PMK.03/2008 as lastly amended by MoF Regulation No.154/PMK.03/2009; and
- 2) Non-profit investment in excess funds engaged in the fields of education or R&D, as previously regulated in MoF Regulation No.80/PMK.03/2009 (PMK-80).

Scholarship

In PMK-68, a scholarship is defined as support given to students, employees (including employees of the employer giving scholarships), or other parties, to attend or complete their education based on their achievement, academic potential, or limited economic ability.

For the grantor, scholarship costs can be deducted when calculating taxable income.

For the recipient, the scholarship is not taxable if they meet the following requirements:

- a. Received by Indonesian scholarship recipients; and
- b. To be used for attending formal and non-formal educations carried out in Indonesia or abroad including:
 - ✓ tuition fees paid to schools, educational or training institutions;
 - ✓ examination fees;
 - ✓ research costs related to the field of study;
 - ✓ cost of books for school;
 - ✓ transportation costs; and/or
 - ✓ reasonable living costs depending on the location of study.

Scholarships will become taxable income for the recipients in certain cases where there is a business or familial relationship between grantor and recipient.

Excess of funds in non-profit organisation for education or R&D

PMK-68 stipulates that the excess of funds received by non-profit organisations engaged in the fields of education or R&D may be excluded from their Income Tax object if the funds are used or allocated for certain designated purposes.

Non-profit organisation (NPO) under PMK-68 are defined as non-profit body or institution in the fields of education and R&D, which has been registered to the relevant regulator and the program implementation is open to any party.

Excess of funds

The excess of funds is defined as the excess of incoming funds received (excluding income subject to Final Tax or non-Income Tax object) over certain designated ongoing tax deductible operational costs.

Designated purposes

The excess of funds earned by the NPO can be excluded from the Income Tax object if they are:

- a. used as construction or procurement of means and infrastructure for educational or R&D activities located in Indonesia:
 - ✓ procurement of means, including:
 - class equipment;
 - goods/equipment for education or R&D;
 - sports equipment;
 - computers;
 - buses/minibuses, or similar vehicles used as students' shuttle;
 - vehicles owned or used by NPO for certain employees because of their position; and/or
 - ✓ construction and procurement of infrastructures, including:
 - buildings;
 - land;
 - laboratories;
 - libraries;
 - computer rooms;
 - offices;
 - residents for teachers/employees;
 - student dormitories;
 - the allocation in the Endowment Fund/*Dana Abadi* (i.e. funds to ensure the sustainability of education or R&D programs which cannot be used to fund operational activities); and
- b. carried out within a maximum period of four years since the excess of funds is created.

The excess of funds used for construction or procurement of means and infrastructure other than those allocated in the Endowment Fund can be given to other NPOs as long as they are located in Indonesia.

Endowment Fund

The excess of funds can be allocated in the Endowment Fund provided that:

- a. the NPO has the highest accreditation rating by the authorised agency;
- b. it is approved by the heads of higher education institutions, implementation agencies, and the relevant Government agency – for educational NPO;
- c. it is approved by the heads of R&D NPO and the relevant Government agency – for R&D NPO; and
- d. there is a stipulation regarding Endowment Fund in NPOs in a Presidential or Ministerial Regulation related to education or R&D.

The Endowment Fund can be placed for investment based on healthy business practices and good risk management. The yield of the Endowment

Fund is subject to relevant Income Tax treatment and can be used for operational activities, especially for the procurement of educational or R&D means and infrastructure.

If the Endowment Fund is not used in accordance with above the provisions, it will become taxable income in the fiscal year when it is found and will be treated as a fiscal correction.

Reporting requirements

NPOs must make a report of the use of the excess of funds and submit it along with the Annual Income Tax Return. In addition, the NPOs must keep a record detailing the use of the excess of funds along with the supporting evidence.

The excess of funds which is not used for its designated purposes within the four years period will be a taxable income through a fiscal correction in the fiscal year after the four years period has ended.

Temporary suspension of Tax Court Services

On 29 June 2020, the Tax Court issued a new Circular Letter No.SE-014/PP/2020 (SE-014) to stipulate a suspension period of the spread of COVID-19 from 29 June 2020 – 5 July 2020.

Several key points stipulated in SE-014 are as follows:

1. Tax Court services are suspended from 29 June – 5 July 2020.
2. If the deadline for submission an Appeal and Lawsuit Letter is within the above period, this Appeal and Lawsuit deadline is suspended for seven days if those letters are submitted directly to the Tax Court.
3. The deadline for submission of an Appeal and Lawsuit Letter through a postal service still refers to the provisions of the Tax Court Law.
4. The above dates will not be counted as part of the time limit for the preparation and implementation of Tax Court proceedings as well as other administration services.

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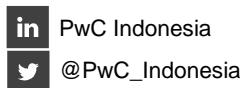
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