TaxFlash

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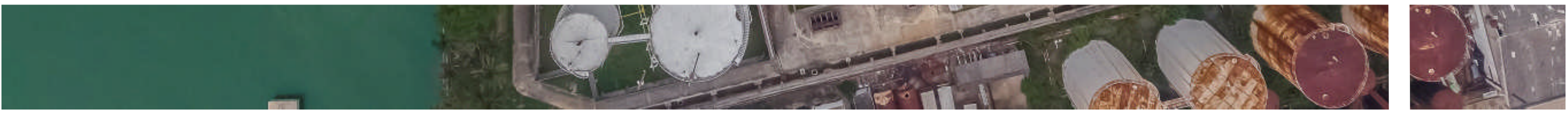

Special Economic Zones – implementing regulation

The Minister of Finance (MoF) recently issued Regulation No.PMK-237[1] to provide guidance on implementation for taxpayers investing in Special Economic Zones (*Kawasan Ekonomi Khusus/KEKs*) as previously stipulated under GR-12[2]. Please refer to our TaxFlash No.07/2020 for the KEK Tax Facilities provided under GR-12.

In principle, the tax facilities in PMK-237 are broadly aligned with GR-12. We highlight below only the key implementing rules added in PMK-237.

For ease of reference business players in a KEK are differentiated into taxpayers organising a KEK's business activity – known as Business Entities (*Badan Usaha/BU*); and taxpayers carrying on business in a KEK – known as Business Players (*Pelaku Usaha/PU*).

A. Income Tax Facilities

1. The Facility

a. Corporate Income Tax (CIT) Holiday

PMK-237 provides for a CIT reduction of 100% (referred to as "KEK-Tax Holiday" to differentiate from the general Tax Holiday concession). This is for taxpayers conducting their main activities in a KEK with the minimum investment value of IDR100 billion.

Taxpayer	Investment (in IDR)	Concession Period* (in years)
BU**	≥ 100 bn	10
PU	100 bn up to < 500 bn	10
	500 bn up to < 1 T	15
	≥ 1 T	20

* Effective from the start of commercial production.
** Concession applicable to income from land and/building (L&B) transfers/rentals and from main activities.

[1] MoF Regulation No.237/PMK.010/2020 (PMK-237) dated 30 December 2020 and effective from 29 January 2021
[2] Government Regulation No.12 Year 2020 (GR-12) dated and effective from 24 February 2020

After the concession period the taxpayer will be provided with a CIT reduction of 50% for the following two fiscal years.

During the concession period no withholding tax is applicable to eligible income (i.e. income from L&B transfers/rentals received by a BU and from main activities). This is without the need for a Tax Exemption Letter (*Surat Keterangan Bebas/SKB*) and except for L&B transfer income received by a BU.

b. CIT Allowance

PMK-237 provides more details on the utilisation of the CIT Allowance as provided under GR-12 (referred to as the "KEK-Tax Allowance" to differentiate from the general Tax Allowance concession). This includes:

Facility	Starting period
30% uplift in deductibility for amounts invested in certain assets	Commercial production
Accelerated fiscal depreciation and amortisation	The month of issuance of the approval
Reduction in the withholding tax rate to 10% on dividends paid to non-residents (subject to any lower tax treaty rate)	The month of issuance of the approval
Tax-loss carried forward extension to 10 years	The tax year of issuance of the approval

Although similar to the general Tax Allowance facility, the tax-loss carried forward facility under KEK-Tax Allowance does not require the fulfilment of successive conditions as in the general Tax Allowance provisions.

In addition, if a taxpayer carries on a business not granted with the KEK-Tax Allowance, the facilities only apply on the eligible portion. For instance, for dividends the reduced withholding tax rate is applicable only on the eligible portion calculated on a prorate mechanism based on turnover or investment realisation.

2. The Criteria

a. General criteria

The general criteria for the KEK-Tax Holiday and KEK-Tax Allowance facilities are:

i. To be a Corporate Taxpayer who carries on business activities in a KEK;
ii. To be an Indonesian Legal Entity;
iii. To have a capital investment with no decision issued on the following tax facilities:
   - A KEK-Tax Holiday or KEK-Tax Allowance;
   - A Tax Holiday;
   - A Tax Allowance;
   - Located in Industrial Zones – *applicable for PU only*;
   - An additional deduction on labour intensive industry – *applicable for PU only*.

b. Additional investment criteria for a KEK-Tax Holiday

A taxpayer must carry on business which falls within the main activities in the KEK with a minimum investment value of IDR100 billion in order to be eligible for KEK-Tax Holiday facility.

For the BU, the taxpayer must start realising the investment plan of at least IDR100 billion within four years from commercial production.

For a PU located in Jakarta, West Java, Banten, Central Java, Yogyakarta, and East Java Provinces, the taxpayer must start realising the investment plan within five years from the issuance of the KEK-Tax Holiday approval.

c. Additional criteria for KEK-Tax Allowance

A PU who fulfils the criteria on main activities and minimum investment of IDR100 billion must choose whether to be granted a KEK-Tax Allowance facility (if desired).

Taxpayers who carry on activities outside of the main activities or with an investment value of less than IDR100 billion may also apply for a KEK-Tax Allowance.

3. Application process

In general, the application process can be made through the Online Single Submission (OSS) system or manually if the OSS is not available. The application should be made prior to the start of commercial production, along with the taxpayer's application for a business identification number or within one year of the new business licence being issued by the OSS system.

The MoF will issue its decision within five working days of receiving a complete application. The decision on the start of utilisation of the tax facility is determined based on a field audit to verify the realisation of the investment plan and the main business activity plan. Adjustments on the entitlement to this tax facility may occur as a result of this audit.

4. Reporting requirements

Once the application is granted, the taxpayer is required to submit annual investment (for a BU and a PU) and production realisation reports (for a PU). If a taxpayer fails to do so within 30 days of year-end, the Directorate General of Taxation will issue a warning letter and this may lead to a tax audit.

5. Prohibition and revocation

PMK-237 sets out a number of other matters relating to administration such as:

- Certain prohibitions for a BU/PU granted income tax facilities (e.g. no transferring assets or changing ownership during the concession period, etc.).
- The conditions for facility revocation (e.g. conducting a main business that is not in line with the initial main business activity plan, etc.).

B. Value Added Tax (VAT)/Luxury Goods Sales Tax (LST) Facilities

GR-12 provides that, where a KEK area overlaps with a Free Trade Zone (FTZ), then VAT will not be collected on the delivery of taxable services from or to the FTZ. However, under PMK-237, VAT will be imposed on the delivery of domestic air transport services and telecommunications services (other than for those using a fixed line from and to the FTZ).

PMK-237 also provides detailed administrative procedures and requirements applicable for VAT compliance in KEKs under various scenarios.

C. Import Duty, Import Tax, and/or Excise Facilities

Customs facilities (i.e. import duty, import tax, excise, etc.) in GR-12 for a BU and a PU during the construction and development stage are outlined in PMK-237. PMK-237 also provides that an Import Duty exemption and non-collection of Import Taxes for capital goods originating from outside the Customs Area extend to goods indirectly imported through a PU in a separate KEK, Bonded Stockpiling Zone (*Tempat Penimbunan Berikat*), or FTZ.

PMK-237 elaborates on the implementation of facilities according to PU categories (i.e. Processing PU, Logistics Centre PU, and Service PU) during production stage. The facilities depend on the type of goods according to the relevancy to the business in question. Please refer to TaxFlash No.07/2020 for the general facilities for the movement of goods in a KEK during production stage.

PMK-237 provides other provision such as:

- The conditions and destinations eligible for special treatment under temporary releases and subcontracts;
- The limitations and conditions on the transfer of capital goods (e.g. machinery and equipment) that can enjoy facilities;
- The Customs Declaration procedures; and
- The KEK self service arrangements in relation to the handling of imported goods.

D. Tax facilities for Tourism KEK

GR-12 provides an Income Tax exemption on the purchase of houses and residences in a Tourism KEK. An SKB is required to enjoy such an exemption.

GR-12 provides customs facilities for activities in a Tourism KEK without detailing with the type of the facilities. Details provided in PMK-237 are as follows:

- An Import Duty exemption on the entry of Consumable Raw Materials for service industries; and/or
- An Import Duty postponement for the entry of goods to be sold in shops or shopping centers in a Tourism KEK.

E. Transitional provisions

Due to the time lag between the issuance of GR-12 and PMK-237, PMK-237 provides transitional provisions as follows:

1. For a BU and PU which obtained Income Tax facilities under GR-96[3], they can still enjoy the facilities until the end of the validity period.
2. For an Income Tax facilities recommendation which was submitted to the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*) prior to the issuance of GR-12, this can be processed under PMK-237.
3. The following entities can apply for a KEK-Tax Holiday or a KEK-Tax Allowance under PMK-237 with modified implementation as follows:
    - For a BU established before the effective date of GR-12;
    - For a BU established after the effective date of GR-12 up to 30 March 2021;
    - For a PU which holds business/investment licences issued before the effective date of GR-12;

[3] Government Regulation No.96 Year 2015 dated and effective from 28 December 2015

- For a PU which holds business licences issued since the effective date of GR-12 up to 30 March 2021.

4. For entities located in a KEK prior to the location becoming a KEK, they can become a PU after fulfilling certain conditions.
5. For VAT not collected under the GR-12 but which has been paid from April 2020 until the effective date of PMK-237, this can now be refunded.

The implementation procedures related to the above transitional provisions are elaborated upon in detail in the PMK-237.

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