

Implementing rules of
Omnibus Law for:

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- General Tax Provisions
and Procedures ^{P7}

Implementing rules of Omnibus Law

On 17 February 2021, the Ministry of Finance (MoF) issued Regulation No.PMK-18¹ to provide implementing rules on the Income Tax, Value Added Tax (VAT) and General Tax Provisions and Procedures (*Ketentuan Umum Perpajakan/KUP*) amendments made present to Law No. 11 Year 2020 or “Omnibus Law”. This is the second major implementing regulation for the tax aspects of the Omnibus Law after the issuance of GR-9². Please refer to [Omnibus Flash No. 02/2020](#) and [Omnibus Flash No. 07/2021](#) for discussion on the Omnibus Law and GR-9.

This TaxFlash highlights the key changes introduced under PMK-18.

Income Tax

A. Clarification on criteria for Domestic Tax Subjects

Under the existing Income Tax Law, an individual is considered as a Domestic Tax Subject (*Subject Pajak Dalam Negeri/SPDN*) if they are residing in Indonesia, present in Indonesia for more than 183 days within a 12-month period, or have an intention to stay in Indonesia.

PMK-18 elaborates in two areas as follows:

- The definition of “residing in Indonesia” is based on whether the individual:
 - ✓ Lives in a place in Indonesia that is at their disposal or can be accessed at all times, either owned, rented, or available to be used by the individual, and not merely a place of transit;
 - ✓ Have their center of vital interests in Indonesia; or
 - ✓ Have their habitual abode in Indonesia.
- An “intention to stay in Indonesia” can be substantiated by documents such as:
 - ✓ A Permanent stay permit (*Kartu Izin Tinggal Tetap/KITAP*);
 - ✓ A Limited stay visa (*Visa Tinggal Terbatas/VITAS*);

¹ MoF Regulation No.18/PMK.03/2021 (PMK-18) dated and effective from 17 February 2021

² Government Regulation No.9 Year 2021 (GR-9) dated and effective from 2 February 2021

- ✓ A Limited stay permit (*Izin Tinggal Terbatas/ITAS*);
- ✓ An employment agreement with a period of more than 183 days; or
- ✓ Other supporting documents (such as a rental agreement of more than 183 days or by mobilising family members to live in Indonesia).

B. Indonesian citizens as Foreign Tax Subjects

PMK-18 provide elaboration on a *Warga Negara Indonesia (WNI)* that fulfils the criteria as a Foreign Tax Subject (*Subjek Pajak Luar Negeri/SPLN*).

To determine the tax status, the individual is subject to a tie-breaker rule under PMK-18 based on the place of permanent home, centre of vital interests, and habitual abode which are analysed on a tiered basis. If based on the tie-breaker analysis residency falls outside of Indonesia, then the individual must fulfil the following requirements:

- Be registered as a tax resident in that foreign jurisdiction (proven by a Certificate of Domicile);
- Have fulfilled their tax obligations for income sourced from Indonesia when the WNI was an SPDN; and
- Have obtained a Certificate of WNI that fulfills the criteria as an SPLN and that is issued by the Director General of Taxation (DGT) (“SPLN Certificate”).

A WNI who is an SPLN based on the tie-breaker rule is treated as a WNI who has left Indonesia for “good” and has become an SPLN from the time they leave Indonesia. Prior to leaving Indonesia, the individual can apply for Non-Effective Taxpayer (NET) status.

A WNI who fulfils the criteria as an SPLN and a NET will not be taxed in Indonesia if they do not earn income sourced from Indonesia. If they do, they are taxed as a non-resident.

If the tax office later discovers that the WNI did not fulfil the SPLN criteria, or did not apply for the SPLN Certificate, the NET status will be invalid and the status and tax treatment will be as an SPDN.

C. Territorial taxation for foreigners

Under the Omnibus Law, foreigners (essentially non-citizens of Indonesia) who have become domestic tax subjects by reason of becoming tax resident in Indonesia are taxed only on Indonesian-sourced income (including income paid outside of Indonesia which is connected with employment, services, or activities performed in Indonesia). This is if they meet the expertise requirements such as the positions as listed in Attachment II of PMK-18.

The expertise must be supported by:

- A certificate issued by a Government-authorized institution, diploma, or have relevant working experience for a minimum of five years in a field of science, technology or maths; and
- An obligation for knowledge transfer.

This territorial taxation treatment is only available for the first four years of residency. If the foreigner leaves and comes back to Indonesia within the four-year period, the four-year period will start from the time of first becoming an SPDN.

Foreigners wishing to apply the territorial taxation treatment must obtain approval from the DGT. If territorial taxation is approved, offshore sourced

income does not need to be reported in the Annual Income Tax Return (“AITR”).

Foreigners fulfilling the expertise criteria who have been an SPDN prior to the issuance of PMK-18 can apply for territorial taxation treatment as long as the four-year period has not passed. If approval is granted, then the territorial taxation starts 2 November 2020 up to the expiry date of the four-year period.

If the individual receives income from overseas and utilises a tax treaty between Indonesia and the source country, then the territorial tax treatment becomes void for that fiscal year.

D. Dividends and offshore income received by Indonesians

The Omnibus Law made attractive changes to the taxation of dividends (both domestic and foreign) and certain offshore income. In most cases the concession requires “reinvestment” of the dividend/offshore income in Indonesia for a certain period. PMK-18 provides details on these reinvestment requirements and examples on the calculation of taxable income under various scenarios.

1. Reinvestment requirements

The qualifying reinvestments are as follows:

- Investments in financial money market instruments such as:
 - ✓ Government bonds (including under sharia principles);
 - ✓ Bonds/*sukuk* issued by State-Owned Entities’ (SOEs), State-Owned financing companies, or private companies whose trading is under Financial Services Authority’s (*Otoritas Jasa Keuangan*) supervision;
 - ✓ Financial investments in a “perception bank” including a sharia bank;
 - ✓ Other legal forms of investment.
- Investments placed in financial instruments outside the money market such as:
 - ✓ Investment in infrastructure under a Public Private Partnership scheme;
 - ✓ Investment in real sector (*sektor riil*) subject to a Government priority;
 - ✓ Indonesia shareholding in a newly established or existing company;
 - ✓ Cooperation arrangements with the Indonesian Sovereign Wealth Fund (*Lembaga Pengelolaan Investasi*);
 - ✓ Lending to small and micro businesses in Indonesia.

PMK-18 provides more details on the types of investment instruments under each category.

The holding period is set at three years with the following mechanism:

- The taxpayer must invest the dividends or offshore income in the qualifying investments by the end of the 3rd or 4th month after the end of the fiscal year for individuals and corporate taxpayers, respectively.
- The investment must be held for a minimum of three years from the fiscal year when the dividend or offshore income is received or earned.
- The investment can not be transferred except to some other type of qualifying investment.

2. Exemption rules

The exemption rules for dividends and offshore income under the Omnibus Law can therefore be summarised as follows:

Type of income	Reinvestment required	Threshold
Domestic dividends received by domestic corporate taxpayers	No	N/A
Domestic dividends received by domestic individual taxpayers	Yes	No
Offshore dividends received by domestic taxpayers – from a listed company	Yes	No
Offshore dividends received by domestic taxpayers – from a non-listed company	Yes	30%*
Offshore income received from a Permanent Establishment (PE)	Yes	30%*
Offshore income received from an active business (not from a PE or subsidiary)	Yes	No

*30% from Profit After Tax (PAT)

For income where there is no threshold on the reinvestment requirement, only the reinvested income is exempted from tax. The remaining distributed income is subject to tax in Indonesia.

For income where the reinvestment requirement provides a 30% threshold, the taxpayer can enjoy a full exemption (i.e. on the reinvestment amount and the remaining PAT) if the threshold is fulfilled. If the reinvestment is less than the threshold, the taxpayer must pay Income Tax on the spread between the actual investment amount and the 30% threshold in order to enjoy the exemption on the reinvestment amount and the remaining 70%.

This regulation adds several new provisions as follows:

- The dividend must be distributed based on a General Shareholders' Meeting (or similar meeting) or via an interim dividend in accordance with the prevailing law.
- Under transitional provisions, PMK-18 provides that the tax incurred on qualifying domestic dividends received by domestic individual taxpayers from 2 November 2020 can be refunded (via an application).
- The 30% threshold for offshore dividends from a non-listed company can be changed by MoF regulation.
- The exemption for offshore dividends from a non-listed company is only applicable to PAT from fiscal year 2020 onwards where this is received or earned from 2 November 2020.

3. Foreign Tax Credit (FTC)

Under the Omnibus Law, foreign taxes paid for exempted income will not be credited or deductible or refunded. If the offshore dividend and other income is not fully invested in Indonesia, the income is partially taxable in Indonesia, and the FTC is allowed on a proportional basis.

4. Exemption mechanism

The exemption mechanism requires reporting the income as non-taxable in the AITR.

For domestic dividends, the Indonesian company distributing the dividend does not need to withhold tax on the dividend.

If a domestic individual taxpayer does not meet the reinvestment requirement, the dividend is subject to Income Tax when received or earned and must be self-remitted by the individual by the 15th day of the month following the dividend being received or earned. Individual taxpayers who have obtained validation on the tax payment slip are

considered to have reported the income in the Monthly Income Tax Return in accordance with the validation date.

5. Realisation report

The relevant taxpayers must submit a realisation report by the end of the 3rd or 4th month following the dividend being received or earned for individual and corporate taxpayers, respectively. This realisation report must be submitted for three years starting from the fiscal year when the dividend or other income is received or earned.

E. Non-Profit Organisations (NPOs)

Under the Omnibus Law, the surplus received or obtained by qualifying NPOs engaged in the fields of social and religious endeavours are non-tax objects if the surplus is reinvested in the facilities or infrastructure within four years. The surplus that must be reinvested is a minimum 25%. The remaining amount can be allocated as an Endowment Fund.

Value Added Tax

A. VAT during preproduction period

Under the pre-Omnibus Law rules, if a VATable Entrepreneur (*Pengusaha Kena Pajak/ PKP*) has not moved beyond pre-production (i.e. not delivered or exported VATable goods/services) within a certain period of time, the PKP is considered to have failed to produce and any Input VAT that has already been credited can no longer be claimed.

PMK-18 emphasises any deliveries made by the PKP must be consistent with the relevant business line. A PKP will be considered as not having made a delivery if they have not delivered or exported VATable goods (for trading companies), VATable services (for service companies), or carried out “own-production” of VATable goods (for manufacturing companies).

Deliveries made for a PKP’s own use, free gifts to customers, deliveries from a Head Office to a Branch (or vice versa) or interbranch, deliveries of assets not initially for sale, or a delivery of taxable goods not related to the main business are not considered as deliveries in the context of determining whether the PKP has moved beyond pre-production.

The general cut-off for the pre-production stage is three years, with an extension for manufacturing sectors and business sectors under National Strategic Projects which are five and six years, respectively. The cut-off period for a PKP that is in pre-production prior to 2 November 2020 follows PMK-18. The DGT will revoke the PKP if a PKP fails to produce within the cut-off period.

For companies that change their business activity within the cut-off period, only the Input VAT that is related to the new business, and has been credited but not refunded, is creditable. The “reverse” mechanism for Input VAT that becomes non-creditable is similar to the pre-Omnibus Law rules.

B. Crediting Input VAT prior to becoming a PKP

Under the Omnibus Law rules, if the DGT deems a taxpayer to be a PKP, then Input VAT incurred prior to this can now be creditable at 80% of the Output VAT that should have otherwise been due. This is from the time when the taxpayer should have been registered as a PKP until when the taxpayer is deemed as a PKP.

This deeming method is via submission of a VAT Return for periods prior to the deeming of PKP or by the issuance of a Tax Assessment Letter (*Surat Ketetapan Pajak/SKP*).

Under this deeming method:

- The VAT amount stated in the actual VAT invoice for periods prior to the deeming of being a PKP cannot be credited, expensed or capitalised.
- The PKP cannot apply other concession methods (i.e. the use of the Other Value or Norm to calculate the net Output VAT payable).

Penalties may apply depending upon the way the deeming method is carried out.

A PKP can apply for an SKP reduction if an SKP on a deemed PKP was issued from 2 November 2020 up to 17 February 2021, this has not included the 80% deeming method and the PKP disagrees with the tax audit result.

C. Input VAT not reported in a VAT Return and discovered during a tax audit

Input VAT that was not reported in a VAT Return but is discovered during a tax audit can be credited in the SKP as long as the Tax Audit Result Notification (*Surat Pemberitahuan Hasil Pemeriksaan*) has not been delivered to the PKP.

D. Input VAT collected through an SKP

The Input VAT collected through an SKP can be credited provided that:

- The SKP is issued only to collect Input VAT;
- The PKP has fully agreed with the tax audit result of the SKP;
- The total SKP amount (i.e. principal plus penalties) has been paid;
- The PKP did not file any tax dispute against the SKP; and
- Everything is conducted in accordance with the law.

This type of SKP can be creditable even where issued prior to 2 November 2020 as long as this was paid after 1 November 2020.

The crediting mechanism is through VAT Return reporting for the period when the SKP was paid or within three months after that period.

E. VAT invoice rules for PKP Retailer

A new definition of a PKP Retailer (*PKP Pedagang Eceran*) was set out under GR-9 as a PKP whose delivery of VATable goods/services is partially or entirely to end-consumers, including via e-commerce platforms.

An end-consumer is defined as a buyer or service recipient who directly consumes the goods/services and does not use the good/service for business purposes.

A PKP Retailer can issue a VAT invoice without the buyer's identity or the seller's name and signature. This type of VAT invoice is however not creditable.

On the other hand, a general PKP can issue VAT invoices without the buyer's identity or the seller's signature for the delivery only for:

- the PKP's own use that is not used for subsequent production or activities directly related to the PKP's business;
- as gifts to end-consumers.

However, the delivery of certain products to end-consumers must still be supported by a completely filled out electronic VAT invoice (*e-Faktur Pajak/e-Faktur*). For example, the delivery or rental of motor vehicles, cruise ships, airplanes, land and buildings (L&Bs), etc.

General Tax Provisions and Procedures

Most of the changes under PMK-18 that are related to the KUP Law are alignments of the changes made under the Omnibus Law and GR-9. Some of the changes that introduce new rules under the Omnibus Law are as follows:

- Time limits to process tax payment instalments or deferment requests for general taxpayers are changed to:

Type of tax payment	Request submission deadline	Time limit for instalment or deferment
AITR tax underpayment	With the AITR submission at the latest	By the AITR submission deadline of the following fiscal year
L&B tax payment	Prior to the notification of Distress Warrant to the taxpayer	24 months from the issuance of the L&B tax payment notice or tax decision
Payment of tax decisions*		

*SKPs, Tax Collection Letters, Tax Objection Decisions, Tax Appeal Decisions, Judicial Review Decisions, or Amendments of decisions.

Previously, the request submission deadline was nine working days prior to the payment deadline, and the time limit for instalments or deferrals was 12 months for L&B tax payments and the payment of tax decisions, and by the last month of the following fiscal year for AITR tax underpayments.

- The tax payment deadline extension for the payment of tax decisions as mentioned above that can be granted for small taxpayers and taxpayers in certain area is extended from two months from the issuance date (effectively one month after payment deadline) to two months from the payment deadline.

PMK-18 provides transitional rules for the changes under the Omnibus Law where the cut-off uses the effective date of the Omnibus Law, i.e. 2 November 2020. Some of the provisions have been covered under GR-9, but with additional transitional provisions as follows:

- Ongoing Interest compensation requests to be paid based on decisions that were issued or announced:
 - prior 2 November 2020 – these are processed under PMK-226³; or
 - since 2 November 2020 – these are processed under PMK-18, and the process must be completed within one month of a complete application being received by the tax office for applications that are submitted from 17 February 2021.
- Applications for tax instalments or deferrals that are ongoing on 17 February 2021 are to be processed under PMK-242⁴.
- Although not mandated under the Omnibus Law, PMK-18 changed the extension time limit for a tax audit on preliminary evidence of a tax crime from a maximum of 24 months to a maximum of 12 months. The transitional provision stated that extension requests that were approved prior to 17 February 2021 follows PMK-239⁵.

³ MoF Regulation No.226/PMK.03/2013 (PMK-226) as lastly amended by MoF Regulation No.65/PMK.03/2018 dated and effective from 29 June 2018

⁴ MoF Regulation No.242/PMK.03/2014 (PMK-242) dated and effective from 24 December 2014

⁵ MoF Regulation No.239/PMK.03/2014 (PMK-239) dated 22 December 2014 and effective from 1 January 2015

- d. Requests to terminate any tax investigation of a tax crime that are ongoing on 17 February 2021 are processed under PMK-55⁶.

⁶ MoF Regulation No.55/PMK.03/2016 (PMK-55) dated and effective from 8 April 2016

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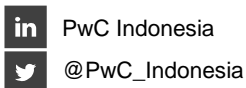
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