

Procedures to apply for Voluntary Disclosure Programme

On 23 December 2021, the Ministry of Finance (MoF) issued Regulation No.PMK-196¹ to provide the procedures to apply for the Voluntary Disclosure Programmes (VDPs) as mandated under the HPP Law².

There are two VDP programmes under the HPP Law. Both are applicable for 1 January – 30 June 2022 as follows:

1. **VDP I** – applicable for taxpayers who participated in the 2016-2017 Tax Amnesty (TA) programme. This covers net assets acquired from 1985-2015 and which were not disclosed under the TA programme.
2. **VDP II** – applicable for individuals only. This covers net assets acquired from 2016-2020 and which were not disclosed in the taxpayer's 2020 Annual Income Tax Return (AITR) and are still owned by the taxpayer at the end of the 2020 Fiscal Year.

The main policy behind these latest programmes is set out in our [TaxFlash No.20/2021](#). This TaxFlash will specifically address the administrative procedures and additional policy provided in PMK-196.

Declaration process

Calculation on undeclared assets

Deductible liability for net asset calculation

Under the VDP programmes, taxpayers can disclose undeclared net assets (assets minus liabilities). Liabilities cover the principal of amounts used to acquire the relevant assets. Based on the guidelines to the VDP I Form in the attachment to PMK-196, for the purpose of calculating the Final Income Tax due, the value of the liabilities is limited to 50% and 75% of the additional asset's value under the

¹ MoF Regulation No.196/PMK.03/2021 (PMK-196) dated and effective from 23 December 2021

² Law No.7 Year 2021 concerning Harmonisation of Tax Regulations (*Harmonisasi Peraturan Perpajakan/HPP*)

VDP I programme for individual and corporate taxpayers, respectively. For the VDP II programme the full liability value can be claimed.

Exchange rate for assets in foreign currency

If the undeclared assets are denominated in a foreign currency, then the exchange rate for the Asset Declaration Letter (*Surat Pemberitahuan Pengungkapan Harta/SPPH*) is that applicable at the end of the fiscal year for the relevant taxpayers. This is the period ending 1 January – 31 December 2015 for the VDP I programme, and 31 December 2020 for the VDP II programme.

Tax dispute processes for participants of VDP II programme

Taxpayer must not be undergoing certain dispute processes

PMK-196 provides clarity on the cut-off time for the start of the disputes as follows:

- a. For a tax audit or a tax audit on preliminary evidence of a tax crime for the 2016-2020 Fiscal Years – this is when the Tax Audit Notification Letter (*Surat Perintah Pemeriksaan*) has been given to the taxpayer or their proxy;
- b. For a tax investigation – this is when the police investigator notifies the commencement of the investigation to the prosecutor;
- c. For a court proceeding for a tax crime – this is when the case has been transferred by the prosecutor to be heard in court.

Revocation of ongoing legal processes relating to tax

An applicant to the VDP II programme must revoke certain ongoing legal processes relating to tax. The statement to revoke is made by ticking the relevant statement box in the SPPH. For legal processes under the Directorate General of Taxes (DGT) authority, this statement serves as a request letter to revoke the ongoing processes. However, for legal processes beyond the DGT's authority (i.e. appeals, lawsuits, or judicial reviews) it is necessary to attach a copy of the request letter for revocation of the ongoing processes.

A taxpayer cannot reapply for these legal processes if an approval (*Surat Keterangan/SK*) has been issued upon the taxpayer's SPPH. The DGT will cancel the relevant SK if it is found that those ongoing legal processes are not revoked.

Payment of the Final Income Tax

The Final Income Tax should be settled through a Perception Bank using a Tax Payment Slip with a Tax Account Code No.411128 and a Deposit Code depending on the type of payment (e.g. type of VDP programme, underpayment resulting from amendments, etc.).

First submissions, amendments, and revocation of SPPH

A taxpayer can file an SPPH, an amendment or a revocation through the submission of an SPPH form electronically through the DGT online website. If the electronic submission is not possible due to *force majeure* reasons, then the submission can be done manually.

Any underpayment of Final Income Tax resulting from the first submission or any amendment must be paid before the SPPH is submitted. An overpayment resulting from an amendment or revocation can be refunded or overbooked upon a request from the taxpayer.

Statements of asset repatriation and/or investment in eligible investments, as well as a statement to revoke all ongoing tax dispute processes, are embedded as part of the SPPH form.

An SPPH submission can be made 24 hours a day and seven days a week Western Indonesia Time. The DGT will issue an SK within 1 working day. An SK that has been issued on an SPPH amendment replaces the previous SK, while the SK for revocation will serve as proof of the revocation.

Amendments

Taxpayers can submit SPPH amendments from 1 January – 30 June 2022 in the event of a typo (calculation), the addition of net assets that were not disclosed, the reduction of net assets that have been disclosed, changes in the use of final income tax rates, or other circumstances. Examples on how to calculate any tax under-or-overpayment is provided in the attachment to PMK-196.

Revocation

Taxpayers may revoke their SPPH from 1 January – 30 June 2022 by submitting an SPPH with a zero value for all declared assets and liabilities. The SK issued prior to the submission of the SPPH revocation is considered null and void.

Consequently, a taxpayer is considered to be not participating in the VDP programme, and can no longer participate in the programme, and therefore will no longer be entitled to the following incentives:

- a waiver of the 200% penalty under TA Law (for VDP I participants);
- a waiver from the issuance of a tax assessment for 2016 – 2020 (for VDP II participants);
- protection that the data and information declared in SPPH cannot be used as a basis for a tax investigation and/or criminal prosecution (for both programmes).

Post-Declaration

Amendments or cancellation of SK

An SK may be amended if, during an examination, the DGT finds typos or miscalculations in the SK.

The DGT may cancel an SK if the DGT finds:

- a. discrepancies between the SPPH declaration and the actual situation;
- b. that the declared assets are not qualified;
- c. that the taxpayer is not eligible or did not fulfill the requirements for the relevant VDP programme.

The DGT may issue a clarification letter if there is an underpayment or overpayment of Final Income Tax as stated in the SK. The letter of clarification must be responded to by the taxpayer within 14 working days either by paying the underpaid tax or submitting a response letter.

The DGT will amend or cancel the relevant SK if the participating taxpayer:

- a. does not settle the underpaid Final Income Tax based on the clarification letter;
- b. declared a tax overpayment as informed in the clarification letter;
- c. does not respond to a clarification letter; or
- d. provided a clarification but which is not in line with the actual situation.

If an SK is cancelled then the taxpayer is considered to have not participated in the VDP programme and therefore will no longer be entitled to the incentives outlined above for the revocation consequences.

Any overpayment resulting from SK amendments or cancellations can be refunded or overbooked at the request of the taxpayer.

Declared asset holding periods

Domestic and repatriated offshore assets declared under the VDP programmes must be retained in Indonesia for a minimum of five years from the issuance of the SK. Offshore assets must be repatriated via a bank transfer by 30 September 2022.

Eligible investment rules

Scope of eligible investments

PMK-196 provides more guidance on the scope of eligible investments as follows:

- a. For business activity involving the processing of natural resources or renewable energy in Indonesia

This type of investment can be via:

- The establishment of a new business; or
- The equity participation in an Initial Public Offering or a Rights Issue of an existing business.

The processing of natural resources is defined as the processing raw materials into semi-finished or finished goods that add to the value of these raw materials. Renewable energy is defined as energy produced from renewable sources. Eligible business sectors under these two categories will be determined by the MoF.

- b. For Government Debt Securities (*Surat Berharga Negara/SBN*)

Investment in SBNs must be purchased in the primary market via a Private Placement through banks or securities companies that are designated as a Main Dealer. Taxpayers must submit a copy of their SK to the Main Dealer to be used as a basis for the Main Dealer to report to the DGT.

If the originating assets are in foreign currency then the purchase of the SBNs can be made in IDR or USD. However, if originating assets are in IDR, then the purchase of SBNs can only be in IDR.

Placement of eligible investment

The eligible investments must be in place by 30 September 2023 and must be retained for a minimum of five years from the investment date.

Where the investment is carried out in stages, the retention period of five years is calculated from when the nominal funds stated in the SK have been fully invested provided this is no later than 30 September 2023. If the eligible investment commitment is not fully invested by 30 September 2023, then the five years period for the invested assets is calculated from 30 September 2023.

Transfers between eligible investments

Taxpayers can transfer between eligible investments before the end of the five years period subject to the following conditions:

- a. The transfer is carried out no earlier than two years from the nominal funds stated in the SK have been fully invested, or from 30 September 2023 if the assets are not fully invested by 30 September 2023;
- b. There are no more than two transfers during the investment period and a maximum of one transfer in any one calendar year;

- c. The time lag between the withdrawal from the previous investment and the placement into the next investment will defer the calculation of the five-year period. This time lag can only be for a maximum of two years.

Failure to repatriate or invest in eligible investments

Any failure to execute asset repatriations or the placement into eligible investments will result in the asset values being subject to Final Income Tax for the 2022 Fiscal Year as stipulated in the HPP Law.

The DGT may issue a warning letter, and upon receipt of this warning letter, the taxpayer must:

- a. submit clarification to the DGT; or
- b. carry out a self-remittance and self-reporting for the additional Final Income Tax,

within 14 days from the date of the warning letter.

If not responded then the DGT can issue an SKPKB through a tax audit with a higher Final Income Tax rate compared to the self-remittance process as stipulated in the HPP Law. An SKPKB can be issued for a maximum of one year from the end of the investment holding period.

Realisation report

Any taxpayer who has a commitment to repatriate and/or to invest in eligible investments is required to submit an Investment Realisation Report electronically through the DGT online website. The report is based on the condition at the end of the fiscal year prior to the year of submission.

The submission deadlines are:

- At the end of the 2022 AITR submission deadline for a first-year report;
- At the end of the 2023 and onwards AITR submission deadline for subsequent years reports.

Post declaration bookkeeping

Recording of assets

The Net Asset Value declared in an SPPH must be presented as additional Retained Earnings in the balance sheet for taxpayers who have bookkeeping requirements.

Newly declared assets and liabilities under an SPPH will be treated as new assets and liabilities in accordance with the date of the SK and reported in the AITR for fiscal year 2022.

Amortisation and depreciation

The additional assets declared in the SPPH in the form of tangible assets cannot be depreciated for tax purposes. Intangible assets cannot be amortised.

Tax dispute on the implementation of VDP programmes

Any dispute related to the implementation of the VDP programmes can only be settled through a lawsuit process filed with the Tax Court.

Legal processes related to an SKPKB resulting from this programme will be processed in accordance with the KUP Law.

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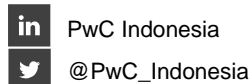
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