

Implementing rules of
General Tax Provisions
under HPP Law^{P1}

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On 12 December 2022, the Government issued Regulation No.GR-50¹ to implement the General Tax Provisions (*Ketentuan Umum Perpajakan/KUP*) introduced under the Harmonisation of Tax Regulations (*Harmonisasi Peraturan Perpajakan/HPP*) Law². GR-50 revokes GR-74³ and all KUP provisions in GR-9⁴, however, all the relevant implementing regulations are still valid as long as they do not contradict this GR-50.

Below are the highlights of the changes stipulated in GR-50.

MAP Decree

GR-50 stipulates that a Mutual Agreement Procedure (MAP) Decree (*Surat Keputusan Persetujuan Bersama*) can be issued if the MAP resulted in an agreement. The MAP Decree will be issued after exchanges of written notification that the MAP result has been completed and can be implemented by Indonesia and the Competent Authority of the treaty partner country.

If the MAP is concluded prior to the issuance of the decision on the ongoing domestic dispute processes and the MAP includes the disputed items, the MAP Decree will only be issued after the taxpayer has made an adjustment or withdraws the application letters on the ongoing domestic dispute processes.

If the MAP Decree results in a tax overpayment, the taxpayer will receive the tax overpayment after settling the tax arrears, but no interest will be paid on the tax overpayment amount.

The MAP Decree can be used as a basis for other administrative processes, such as a basis to amend a tax return to revise the tax loss amount based on the MAP Decree, for overpaid tax and interest payment, to collect tax underpayment, or to issue administrative sanction reduction. In addition, a MAP Decree can also

¹ Government Regulation No.50 Year 2022 (GR-50) dated and effective from 12 December 2022

² Law No.7 Year 2021 dated and effective from 29 October 2021

³ Government Regulation No.74 Year 2011 (GR-74) dated 29 December 2011 and effective from 1 January 2012

⁴ Government Regulation No.9 Year 2021 (GR-9) dated and effective from 2 February 2021

be amended under Article 16 of the KUP Law if there is a typo or miscalculation in it.

The transitional rules stipulate that the implementation of a MAP until 31 December 2022 is still carried out in accordance with GR-74.

The suspension of the 12-months deadline on tax audit with procedural defects

GR-50 changes the determination of the 12-months deadline in a refund situation where the tax audit has procedural defects, e.g, no closing conference carried out during a tax audit process. If the Tax Assessment was issued with procedural defects and is cancelled, either through a cancellation under Article 36 of the KUP Law or through a Lawsuit decision, the tax audit process is continued by completing the missing procedures. If this is related to a refund request with a 12-months deadline to issue a tax assessment, this deadline is suspended from the issuance of the initial tax assessment until the issuance of the decision cancelling the tax assessment.

This suspension is also applicable when a taxpayer submits a Lawsuit to a Director General of Tax (DGT) letter stating that the taxpayer's Objection letter cannot be considered, and the Lawsuit decision was issued in favour of the taxpayer. In this case, the 12-months deadline to issue an Objection decision is suspended from the sending of the DGT Letter until the Lawsuit decision is received by the DGT.

One of the examples provided is as follows:

- A taxpayer submits a 2021 Overpayment Annual Income Tax Return (AITR) on 1 April 2022 (whereby the initial deadline to issue a Tax Assessment is 31 March 2023).
- The tax office issue a Tax Assessment on 30 November 2022 without a closing conference (tax audit is carried out for 8 months).
- Taxpayer filed a cancellation request under Article 36 of KUP Law and a cancellation decision is issued on 10 May 2023.
- According to GR-50, the tax office can continue the tax audit process to complete the missing procedures and the deadline to re-issue the Tax Assessment will be 4 months (12-months deadline minus 8 months of the previous tax audit process) from the date of the issuance of the cancellation decision, i.e. 9 September 2023 (4 months after 10 May 2023).

This change seems to deviate from the provisions on the deadline to issue a Tax Assessment in a refund situation in the KUP Law provisions. In GR-74, if the 12-months deadline to issue a tax assessment related to a refund request has been passed, an Overpayment Tax Assessment must be issued in accordance with the AITR.

Tax audit on preliminary evidence of a tax crime

GR-50 modifies the rules related to a suspended tax audit in the case where there is an allegation that there is a tax crime, where the tax audit is proceeded to a tax audit on preliminary evidence of a tax crime (*Pemeriksaan Bukti Permulaan /Bukper*).

Under the new rule, the suspended tax audit is:

1. Continued if:
 - a. The Bukper tax audit is discontinued due to:
 - ✓ The preliminary evidence of the tax crime is not found
 - ✓ The occurrence is not a tax crime
 - ✓ The individual taxpayer passed away
 - b. The investigation (*penyelidikan*) is discontinued due to:
 - ✓ Not enough evidence
 - ✓ The occurrence is not a tax crime

- ✓ The same case cannot be prosecuted twice (*nebis idem*) or the suspect passed away.
 - c. There is a court decision on the tax crime that has permanent legal force that acquitted the taxpayer from all legal charges and a copy of the decision has been received by the DGT.
2. Discontinued if:
- a. The Bukper tax audit is discontinued due to voluntary disclosure by the taxpayer under Article 8(3) of KUP Law and the disclosure has conformed with the actual circumstances.
 - b. The investigation is discontinued due to:
 - ✓ The taxpayer made a disclosure under Article 8(3) of KUP Law; or
 - ✓ The taxpayer or suspect made payments under Article 44B of KUP Law to settle the state revenue loss
 - c. The Bukper tax audit or the investigation is discontinued because the 10-years statute of limitation for prosecution of a tax crime has expired.
 - d. There is a court decision on the tax crime that has permanent legal force, other than decision in point 1.c above, and a copy of the decision has been received by the DGT.

As an exception to the above rule, the suspended tax audit is continued in the case there is a tax overpayment resulting from the Bukper tax audit or the investigation.

Investigation

GR-50 provides elaborate procedures for a tax investigation, including summons of witness and suspects, determination of suspects, handover to prosecutor, etc. In addition, it also stipulates that the Minister of Finance (MoF) can issue a prohibition notice to exit the country as part of the investigation process.

The provisions for the discontinuation process of an investigation essentially follows the rules that were modified in the HPP Law. With an elaboration on the procedures for payments under Article 44B of KUP Law which fulfil the requirements to be considered as settling the state revenue loss to stop a tax investigation, including requesting the information on the tax underpayment and administrative sanction to the DGT. If this information request has been submitted before 29 October 2021 and the investigation termination has not been issued by 29 October 2021, the administrative sanctions for tax crimes under Article 38 & 39 of KUP Law will follow the HPP Law, while for Article 39A will follow the Omnibus Law⁵.

Carbon Tax implementation

GR-50 define Carbon Tax (CT) taxpayer as individuals or companies purchasing goods containing carbon or carrying-out activities which result in a certain level of carbon emissions within a certain period are the parties subject to the Carbon Tax, and CT Collector.

CT is paid by self-payment or by collection by a CT Collector. A CT Taxpayer must submit an AITR to report the calculation and payment of CT at the latest 4 months after the end of the calendar year, while a CT Collector must submit a monthly tax return at the latest on the 20th of the following month. Late submission will be subject to the same penalty as other types of tax reporting. Certain taxpayers may be exempted from the CT reporting.

⁵ Law No.11 Year 2020 dated and effective from 2 November 2020

A CT Taxpayer and Collector must conduct recording of the activities emitting carbon or the sale of goods containing carbon, so that the CT due can be properly calculated. The recording of documents and information is conducted in accordance with the general bookkeeping requirements and failure to do so is also subject to the same penalty for not conducting bookkeeping.

Digitalisation in tax administration process

The provisions on this topic under GR-50 are largely the same as the provisions previously governed under GR-9. GR-50 only emphasises that the authorised parties to be appointed by the MoF as an electronic certificate provider must be chosen from a list of providers that have been acknowledged by the Ministry of Communication and Information. The MoF can also cooperate with other parties for the use of electronic signature. Issuance of electronic decisions with uncertified signature or seal is still considered valid as long as it can be proved that it originates from the tax system. The use of certified signature or seal for the issuance of decisions must be implemented at the latest five years after the effective date of this GR.

Integration of population database with the tax system

The Ministry of Internal Affairs (MIA) provides population data to the MoF to be integrated with the tax system, which includes the provision of access rights to the population data by the MIA.

Other provisions

GR-50 provides several minor confirmations and changes as follows:

a) NIK-related provisions

GR-50 embedded the Resident ID Number (*Nomor Induk Kependudukan/NIK*) in the provisions related to individual taxpayers, including on the activation and deactivation of the NIK during a Tax ID registration and deregistration process.

b) Additional criteria to revoke “golden” taxpayer status

Certain taxpayers that are considered as highly compliant (“golden” taxpayer) can enjoy a preliminary tax refund process. However, certain circumstances may result in the revocation of this status. GR-50 added the circumstances whereby the revocation can be made, as follows:

- ✓ Submitting a financial statement that is not audited by a public accountant or a government financial supervisory agency.
- ✓ Submitting a financial statement that is audited by a public accountant but with an opinion other than unqualified opinion (*Wajar Tanpa Pengecualian*).

c) Confirmation of taxpayer who withdraws their Objection letter

GR-50 confirms that although a taxpayer who withdraws his Objection letter cannot file for a reduction or cancellation of an incorrect Tax Assessment, they can still apply for a reduction or an elimination of sanctions.

d) Confirmation of tax paid prior to objection

When a taxpayer loses their case at the Objection or appeal level, they are subject to a 30% or 60% penalty on the tax due, deducted by the tax that has been paid prior to filing the Objection letter. GR-50 confirms that this includes tax payment on both the agreed and disagreed portion during the tax audit closing conference.

- e) Confirmation of disagreed portion in a tax audit closing not tax arrears**
GR-50 confirms that the portion of tax due that is disagreed during the closing conference has not become a tax arrears until the issuance of the Objection Decision or Tax Court Decision if the taxpayer files for Objection or Appeal respectively. Consequently, this portion will not be deducted from the settlement of a tax overpayment.
- f) Transitional rules on administrative sanctions**
GR-50 stipulates that the administrative sanctions issued on the following events follows the provision of the HPP Law:
- ✓ Issuance of an Underpayment Tax Assessment issued from 29 October 2021 relating to an unreported tax return, invalid VAT compensation or invalid use of 0% VAT, or a failure to comply with bookkeeping requirements which resulted in:
 - Unpaid/underpaid Income Tax in a fiscal year or Income Tax not withheld/collected or under withheld/collected – subject to $(MIR^6+20\%)/12$ max. 24 months. GR-50 further specify the MIR to be used where the administrative sanction is calculated from periods prior to or from 29 October 2021.
 - Income Tax withheld/collected but unremitted/under remitted or Unpaid/underpaid VAT – subject to 75% increment
 - ✓ Objection, Tax Court, and Judicial Review decision issued from 29 October 2021 which resulted in additional tax payment will be subject to the 30% or 60% penalty.

⁶ Ministry of Finance (MoF) Interest Rate

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