



Tax audit on preliminary evidence of a tax crime <sup>P1</sup>

## Tax audit on preliminary evidence of a tax crime

On 5 December 2022, the Minister of Finance (MoF) issued PMK-177<sup>1</sup> regarding the Tax Audit on Preliminary Evidence of a Tax Crime (*Bukti Permulaan/Bukper*). PMK-177 revokes PMK-239<sup>2</sup> on Bukper tax audit and Articles 107 and 114 of PMK-18<sup>3</sup> on Job Creation Law in Taxation. PMK-177 will be effective from 3 February 2023.

Below are the highlights of the changes stipulated in PMK-177.

### Update on the process of Bukper tax audit

PMK-177 updates the overall process of a Bukper tax audit to be as follows:

#### Preparation

- PMK-177 acknowledges the importance of evidence in the form of electronic data, thus a Bukper tax audit will also focus on searching and securing electronic data of the taxpayer.

#### Process

- A Bukper tax audit may be in the format of open or closed tax audits, where interaction with taxpayer as well as taxpayer's data is more accessible under the open tax audit format. To increase the evidence as well as having a correct calculation of the state revenue loss, PMK-177 provides an avenue for the Director General of Taxes (DGT) to directly escalate a closed Bukper tax audit to an open Bukper tax audit.
- To support their evidence during a Bukper tax audit, the tax auditor can request for additional information or data from other or third parties that have a relationship with the taxpayer. Under PMK-177, the Bukper tax auditor may now propose to the DGT to also conduct Bukper tax audit on the other or third party that is intentionally not providing the requested information or providing incorrect information.

<sup>1</sup> MoF Regulation No.177/PMK.03/2022 (PMK-177) dated 5 December 2022

<sup>2</sup> MoF Regulation No.239/PMK.03/2014 (PMK-239) dated 22 December 2014

<sup>3</sup> MoF Regulation No.18/PMK.03/2021 (PMK-18) dated and effective from 17 February 2021 that amended PMK-239

- Under the existing regulation, any tax return or tax return amendment submitted by a taxpayer after a closed Bukper tax audit is started can still be acknowledged by the tax auditor. However, PMK-177 now stipulates that for an open Bukper tax audit, a tax return or any amendments submitted after the Bukper notification letter is delivered will be considered as not submitted.
- The timeline to conduct a Bukper tax audit as well as the timeline for a Bukper tax audit extension remains the same, i.e. 12 months, plus a 12-month extension. In granting an extension in the case of a Bukper related to a tax audit on a refund request, PMK-177 stipulates that the DGT should also consider the deadline for the refund request.

### Closing

- Based on evidence gathered during an open Bukper tax audit, a tax auditor will invite the taxpayer for a clarification on the potential tax revenue loss by sending a summon letter to the taxpayer at the latest two months prior to the deadline of Bukper tax audit.
- After obtaining the clarification from the taxpayer, the tax auditor will send a notification of the result of the open Bukper tax audit to the taxpayer at least one month prior to the deadline of the Bukper tax audit. At this stage, the tax office will also inform the taxpayer on the follow-up actions based on the result of the open Bukper tax audit.

### **Elimination of proxy's role**

PMK-177 eliminates the use of a proxy to represent a taxpayer during several processes of an open Bukper tax audit, such as for receiving Bukper tax audit notification letter, refusing the Bukper tax audit, and refusing to sign the record of refusal on behalf of the taxpayer.

### **Voluntary Disclosure**

Taxpayers subject to Bukper tax audit can apply for Voluntary Disclosure (VD) under Article 8(3) of the General Tax Provisions (*Ketentuan Umum Perpajakan/KUP*) Law of their wrongdoing for not submitting tax returns or having submitted incorrect or incomplete tax returns (including attaching incorrect information). Under PMK-177, taxpayers can also apply for VD based on the above events separately or together with disclosures related to other tax crimes, e.g. misuse of Tax ID Number, not maintaining bookkeeping in Indonesia, or issuing a fictitious tax invoice.

Taxpayers should submit their VD application via an electronic channel determined by the DGT or direct their submission to the tax office where the taxpayer is registered if the electronic means are not available.

A VD application can be submitted during the process of a Bukper tax audit or after the issue of notification on the result of an open Bukper tax audit as long as the start of the investigation has not been informed to the public prosecutor through a police investigator. If the examination of the submitted VD results in different follow-up actions from the original findings, the DGT will issue a notification of the change in follow-up actions within 10 working days upon receiving a complete VD application.

### **Suspension of tax audit due to indication of tax crime**

A regular tax audit will be suspended and escalated to a Bukper tax audit if during the tax audit there are indications found that a tax crime has been

committed. Under PMK-177 and the recent GR-50<sup>4</sup>, the suspended tax audit will be:

1. Continued if:
  - a. The Bukper tax audit is discontinued due to:
    - 1) the preliminary evidence of the tax crime is not found;
    - 2) the occurrence is not a tax crime;
    - 3) the individual taxpayer passed away;
  - b. The investigation (*penyidikan*) is discontinued due to:
    - 1) not enough evidence;
    - 2) the occurrence is not a tax crime; or
    - 3) the same case cannot be prosecuted twice (*nebis in idem*) or the suspect passed away; or
  - 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 VD submitted by the taxpayer under Article 8(3) of KUP Law and the disclosure conforms with the actual circumstances;
  - b. The investigation is discontinued due to:
    - 1) the taxpayer made a VD under Article 8(3) of KUP Law; or
    - 2) the taxpayer or suspect made payments under Article 44B of the KUP Law to settle the state revenue loss;
  - c. The Bukper tax audit or the investigation is discontinued because the 10-year statute of limitation for prosecution of a tax crime has expired; or
  - 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.

### **Follow-up actions from the result of a Bukper tax audit**

Under PMK-177, the follow-up actions will be differentiated between open and closed Bukper tax audit.

#### Follow-up actions resulting from open Bukper tax audit

1. Open Bukper tax audit will be escalated to investigation if preliminary evidence of a tax crime is found and the taxpayer:
  - a. is not submitting a VD; or
  - b. has submitted a VD but the disclosure does not conform with the actual circumstances.
2. Open Bukper tax audit will be discontinued if:
  - a. the taxpayer has submitted a VD and the disclosure conforms with the actual circumstances;
  - b. the individual taxpayer passed away;

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<sup>4</sup> Government Regulation No.50 Year 2022 (GR-50) dated and effective from 12 December 2022. GR-50 to implement the new KUP provisions under the Harmonisation of Tax Regulations Law. Please refer to our [TaxFlash No.23/2022](#) for our discussion on GR-50

- c. the occurrence is not a tax crime; or
- d. the 10-year statute of limitation for prosecution of a tax crime has expired.

For taxpayer whose case is being escalated to an investigation under point 1.b above, payment that has been made upon VD submission will be regarded as a part of settlement to the state revenue loss but only amounting to ½ of the payment (excluding 100% administrative sanction from the tax underpayment value). This method to partially recognise a payment made upon VD submission was in place under PMK-239 (with a 2/5 proportion) and later deleted under PMK-18. PMK-177 intends to reapply this calculation method with a different proportion.

#### Follow-up actions resulting from a closed Bukper tax audit

1. A closed Bukper tax audit will be escalated to an open Bukper tax audit or investigation if there is an indication or preliminary evidence of a tax crime based on examination; or
2. Closed Bukper tax audit will be discontinued if:
  - a. the individual taxpayer passed away;
  - b. the occurrence is not a tax crime;
  - c. preliminary evidence of a tax crime is not found; or
  - d. the 10-year statute of limitation for prosecution of a tax crime has expired.

#### **Transitional provisions**

PMK-177 sets out the following transitional provisions that will be effective from 3 February 2023:

1. A Taxpayer can still apply for VD during a Bukper tax audit for which a Bukper tax audit instruction letter is issued prior 3 February 2023;
2. In the case a taxpayer has submitted a VD prior 3 February 2023 but the disclosure does not conform with the actual circumstances, the calculation of the tax settlement that has been made upon VD submission will follow provisions under PMK-177;
3. A Bukper tax audit for which an instruction letter was issued prior 17 February 2021 must be concluded by 31 December 2022;
4. A Bukper tax audit for which an instruction letter was issued on or after 17 February 2021 must be concluded within the deadlines of PMK-177; and
5. Notification of a Bukper tax audit result can be delivered prior to the deadline of a Bukper tax audit process for which a Bukper tax audit instruction letter is issued prior 3 February 2023.

Any documents in relation to a Bukper tax audit that have been issued prior to 3 February 2023 are still considered valid.

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