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Implementing regulation of Tax and Customs Facilities in IKN P1

Implementing regulation of Tax and Customs Facilities in IKN

In May 2024, the Government issued Minister of Finance ("MoF") Regulation No. PMK-28¹, which stipulates taxation and customs facilities in the National Capital named "Nusantara" (*Ibu Kota Negara bernama Nusantara/"IKN"*).

PMK-28 serves as an implementing rule of GR-12², which previously governed the facilities in IKN. Please refer to TaxFlash No.01/2023 for more details on GR-12. PMK-28 provides several updates as well as more detailed elaboration of matters related to the administrative procedures, investment provisions, obligations, prohibitions and adding exceptions.

The highlights of this regulation are as follows:

1. Income Tax facilities

a. Corporate Income Tax ("CIT") reductions in the IKN and Partner Regions

Eligibility and investment criteria

Under GR-12, domestic corporate taxpayers whose investment in the IKN or a Partner Region ("Daerah Mitra/DM") of at least IDR 10 billion can be granted a 100% or 50% reduction of their CIT payable. PMK-28 stipulates that to obtain the facility, taxpayers must meet the following criteria:

- a) be a domestic taxpayer;
- b) conduct business activities through head offices and/or business units located in the IKN and/or DM;
- c) have status as an Indonesian legal entity;
- d) be conducting investment in the field of business that has strategic value to accelerate the development of the IKN or in the field of infrastructure business and public services in the DM.

Furthermore, investment as referred to in point d) above is investment in the form of tangible fixed assets that meet the following criteria:

i. acquired in a new condition, except for parts of machinery and equipment needed for the implementation of investment in health,



¹ MoF Regulation No.28 Year 2024 (PMK-28) dated and effective from 16 May 2024

² Government Regulation No.12 Year 2023 (GR-12) dated and effective from 6 March 2023

- research and innovation, and construction sectors in the IKN and/or DM·
- acquired since the date of Business Licensing issued by the Online Single Submission (OSS) institution;
- iii. acquired before the Commercial Production start; and
- iv. have never obtained a Tax Holiday, Tax Allowance, KEK-Tax Holiday, Super Deduction, and an additional deduction on labour intensive industry facility.

Application procedures and administrative procedures

To be able to apply for this facility, taxpayers must first obtain a business licence from the OSS system. The OSS system will examine whether or not each taxpayer meets the criteria. Taxpayers who meet the criteria will receive a notification that they can apply for the CIT reduction facility. This application is submitted before the start of commercial operations and no later than one year after the date of issuance of the business licence through the OSS system. Applicants owned by another domestic taxpayer must provide and automated fiscal certificate (*Surat Keterangan Fiskal/SKF*) of the domestic shareholder.

After the start of commercial operation, the taxpayer must again apply through OSS system for the utilisation of the facility, by uploading certain supporting documents and obtaining an automated SKF of the applicant. The approval for the utilisation is determined by the Minister, based on the results of the field tax audit conducted by the Directorate General of Tax (DGT) to check whether the taxpayer has fulfilled the requirements/commitment made during the initial application. The time limit of this audit is a maximum of 45 working days from when the tax audit notification letter is delivered to the taxpayer, i.e. the same as the same process under the general Tax Holiday facility.

Taxpayers who have obtained this facility are obliged to realise the investment plan no later than two years after the approval decision is issued (at least 50% of the investment plan), submit a realisation report, and conduct separate bookkeeping (between investments that obtain the facilities and those that do not).

Withholding tax (WHT) exemption facility

PMK-28 stipulates that taxpayers who have obtained approval for this facility are granted exemption from withholding tax on:

- a) income received from main business activities; and
- b) purchases or imports of goods/materials carried out in relation to the main business activities in the strategic value business sector and the infrastructure and public services business sector.

The WHT exemption facility is given for Income Tax Article 22, Article 23, Article 4 paragraph (2) (from construction services and Land and Building (L&B) rental business, including based on a Sale and Purchase Binding Agreements on L&B/Perjanjian Pengikatan Jual Beli/PPJB) through a Tax Exemption Letter (Surat Keterangan Bebas/SKB). Taxpayers who are granted a 50% CIT reduction facility are given a 50% WHT exemption accordingly.

b. CIT reductions and withholding tax exemptions in Financial Centres

Eligibility criteria, procedures and prohibition

Taxpayers conducting financial services in the IKN Financial Centre can be granted a 100% or 85% reduction of their CIT payable. To obtain the facility, taxpayers must meet the following criteria:

a) be a domestic corporate taxpayer or foreign corporate taxpayer conducting business through a Permanent Establishment (PE);



- b) making investment and conducting financial sector business activities in the Financial Centre of the IKN; and
- making investment for which a decision regarding the granting of the CIT reduction facility has never been issued.

PMK-28 confirms that the list of eligible business activities set out in GR-12 include business activities based on sharia principles. PMK-28 also provide list of business activities that falls under the category of other financial services activities, such as digital financial assets (including crypto assets), corporations involved in developing national private businesses, cooperatives, small and medium enterprises.

The procedures for the initial application of the facility and for the application to utilise the facility are similar to the CIT reduction in IKN and DM.

A domestic taxpayer or PE that obtain loans in the context of financing development, construction and economic activities in the IKN/DM are prohibited from using such loans other than for that purpose. This includes the prohibition to forward the loan to other taxpayers. If they fail to do so, the Income Tax facility provided in IKM/DM would be revoked and the costs incurred cannot be used as deductible expenses.

WHT exemption facility for eligible applicants

PMK-28 stipulates that taxpayers who have obtained approval for this facility are granted exemption from withholding tax on:

- a) income received from main business activities; and
- b) purchases or imports of goods/materials carried out in relation to the main business activities.

The above WHT exemption facility is given for Income Tax Article 22, Article 23, Article 4 paragraph (2) (from interest on time deposits and other savings, stock exchange transactions, interest on bonds and state bonds, interest or discounts on short-term securities traded in the money market) through an SKB. Taxpayers who are granted an 85% CIT reduction facility are given an 85% WHT exemption accordingly (i.e. 15% of the WHT due remains payable).

WHT exemption facility for income received by foreign tax subjects

Income derived from investment in the IKN Financial Centre that is received/earned by a foreign tax subject is exempt from WHT for 10 years. PMK-28 defines a foreign tax subject as a corporate or individual foreign tax subject (excluding a PE) who is the party receiving the benefit of income (beneficial owner). The beneficial ownership rule stipulated under PMK-28 is the same as the rule stipulated under the requirements for Certificate of Domicile of foreign tax residents for tax treaty relief purposes.

Moreover, further administrative provisions relating to foreign tax subjects (such as compliance monitoring, etc.) are also elaborated in PMK-28.

c. CIT reductions for establishment/relocation of headquarters/regional offices to the IKN

Businesses with foreign tax status or domestic taxpayers who establish/relocate their headquarter/regional office ("HQ/RO") to the IKN can be granted a CIT reduction.

For foreign tax subjects, the facility applies on all income from the main activity as a HQ/RO in IKN. For domestic taxpayers, the facility applies on the income from the main activity as a HQ/RQ in IKN which comes from Business Players (*Pelaku Usaha/PU*) and/or communities located in the IKN area.



PMK-28 added the criteria that must be met for foreign tax subjects and domestic taxpayers, as follows:

a) Foreign tax subject:

- ✓ Has at least two affiliated units and/or related business entities outside Indonesia (such as subsidiaries, branches, joint ventures, or other similar entities):
- ✓ Has economic substance in the IKN;
- ✓ Forms a legal entity in the form of Limited Liability in Indonesia;
- ✓ Has a commitment to start realising the establishment/relocation of HQ/RO to the IKN no later than one year after the issuance of the approval decision on CIT reduction facility; - new
- ✓ Has a Business Licence issued by the OSS system; new and
- ✓ Has never been issued the CIT reduction facility. new

b) Domestic taxpayer:

- · Has economic substance in the IKN;
- Forms a legal entity in the form of Limited Liability in Indonesia;
- Is a new business activity and not a result of dissolution, liquidation, a merger, consolidation, separation, business takeover or business transfer of the taxpayer's business group located outside the IKN; -
- Has a commitment to start realising the establishment/relocation of HQ/RO to the IKN no later than one year after the issuance of the approval decision on the CIT reduction facility; - new
- Has a business licence issued by the authorised ministry or institution; - new and
- Has never been issued the CIT reduction facility. new

PMK-28 provides the criteria to fulfil the economic substance requirements, as follows:

- a) Has business activities in the IKN that are managed by its own management and the management has sufficient authority to carry out its business activities;
- b) carrying out strategic activities for the company and/or business group, such as implementing strategic corporate decisions, consolidating the implementation of new investments, expansion, mergers, acquisitions, dissolution of affiliates, and consolidation of financial management and/or human resources;
- c) has annual operating costs of at least IDR 15 billion;
- d) employs at least 50 Indonesian workers with permanent employee status who are reported in the Income Tax Article 21 tax return; and
- e) has business income other than income from dividends, interest, royalties, and/or gains on transfer of assets.

The procedures for the initial application of the facility and for the application to utilise the facility are similar to the CIT reduction in IKN and DM.

d. Super deduction for internship programmes and/or vocational training

Domestic corporate taxpayers that carry out internship and/or vocational training programmes to develop competency-based human resources in the IKN are entitled to a maximum deduction of 250% of the costs incurred for those activities. PMK-28 clarifies that the 250% deduction consists of a 100% deduction for the actual amount spent plus an additional 150% deduction.

In general, the provisions regarding these facilities (such as scope of activity and field competency, eligible costs, obligation to submit an annual cost report, etc.) which are regulated in PMK-28, are similar to the rules



under PMK-128³ which stipulates super deduction for the same category of expenses that is available for the general taxpayer outside the IKN area, the difference being that the super deduction amount is capped at 200% under PMK-128 instead of 250% under PMK-28.

e. Super deduction for Research and Development ("R&D") activities

Domestic corporate taxpayers that have places of business that carry out certain R&D activities in the IKN are entitled to a maximum deduction of 350% of the costs incurred for a certain period. PMK-28 clarifies that the 350% deduction consists of a 100% deduction for the actual amount spent plus an additional 250% deduction (depending on the type of R&D that is conducted).

The breakdown of the allocation of the additional 250% deduction under PMK-28 is as follows:

- a. 50% additional deduction when the R&D activities obtain Intellectual Property Rights (IPR) in the forms of patent or Plant Variety Protection (PVP) rights that are registered in the Indonesian IPR office.
- b. 25% additional deduction when the IPR in point (a) are also registered in an overseas IPR office.
- c. 125% additional deduction when the R&D activities have reached the commercialisation stage.
- d. 50% additional deduction when the R&D activities in point (a), (b), or (c) are carried out in cooperation with the Government's R&D institution or higher education institution in Indonesia.

In general, the provisions regarding these facilities (such as eligible activities, eligible expenses, etc.) which are regulated in PMK-28, are similar to the rules under PMK-153⁴ which stipulates super deduction for the same category of expenses that is available for the general taxpayer outside the IKN area, the difference being that the super deduction amount is capped at 300% under PMK-153 instead of 350% under PMK-28.

A taxpayer whose application has been approved must submit annual R&D cost reports and reports on the calculation of the use of additional deduction to the DGT and the Head of Fiscal Policy Agency (*Badan Kebijakan Fiskal/BKF*) and the Head of Authority (*Kepala Otorita*) at the latest by the submission deadline of their Annual Income Tax Return (AITR).

f. Super deduction for donations and/or building public, social and/or other non-profit facilities

Domestic corporate taxpayers who donate money, goods, and/or cost to pay for the construction of public, social, and/or other non-profit facilities in the IKN are entitled to a maximum deduction of 200% of the expenditure. PMK-28 stipulates that the 200% deduction consists of a 100% deduction for the actual amount spent plus an additional 100% deduction. However, such donations are not deductible if they constitute the donor's business activities obligation and/or costs in the IKN.

⁴ MoF Regulation No.153/PMK.010/2020 (PMK-153) dated and effective from 9 October 2020. Please refer to <u>TaxFlash No.42/2020</u> for discussion on PMK-153.



³ MoF Regulation No.128/PMK.010/2019 (PMK-128) dated and effective from 9 September 2019. Please refer to <u>TaxFlash No.15/2019</u> for discussion on PMK-128.

The requirements to enjoy this deduction are as follows:

- ✓ the taxpayer has fiscal net income in the previous year's AITR;
- ✓ the donation will not cause a loss for the relevant tax year;
- √ the donation must be supported by valid evidence;
- ✓ the taxpayer must obtain technical and specification approval from the authority of IKN if the donation is in the form of goods or costs; and
- ✓ the taxpayer must obtain an automated SKF.

To enjoy the facility, the taxpayer must submit an application to the Head of the Authority through the OSS system prior to giving the donation. If approved, the taxpayer can enjoy the deduction after the realisation of the donation. The first 100% is deductible in the year when the cost is incurred and the remaining 100% is deductible in the year when the donation is handed over to the Head of Authority.

Further administrative provisions relating to the application and reporting requirements (including the consequences from the failure to do so) are elaborated in PMK-28.

g. Final Article 21 Income Tax facilities borne by the government

GR-12 stipulates that only employment income received/earned by certain employees can enjoy this facility, whilst other types of income are subject to normal Income Tax. PMK-28 confirms that a normal Income Tax regime will also apply for income originating from outside IKN.

2. Value-Added Tax (VAT) not-collected and Luxury-goods Sales Tax (LST) exemption facilities

a. Facilities in the IKN

1) VAT not-collected

VAT Non-collection Letter requirement

PMK-28 provides the details on which transaction require a VAT Non-collection Letter (*Surat Keterangan Tidak Dipungut/SKTD*) to enjoy the VAT facility. Generally, an SKTD is required on the delivery of certain strategic taxable goods and services with exceptions such as garbage or waste management services. Meanwhile, for import of certain strategic taxable goods, an SKTD may be required depending on the circumstances.

Criteria for eligible recipients

The VAT facility is applicable for the following recipients:

- a. For strategic taxable goods:
 - i. Individuals
 - An Indonesian citizen with a national identification number; or
 - A foreign national with a tax identification number or national identification number issued by a foreign country authority or passport.

ii. Entities

An entity who is established and/or domiciled in Indonesia as proven by a tax identification number (*Nomor Pokok Wajib Pajak/NPWP*). In the event that a certain entity is not a tax subject, an NPWP is not required.

b. For strategic taxable services:

Individuals and entities may enjoy the VAT facility if they carry out business activities, work and/or are domiciled in IKN. Details of documentation to prove this status is provided in the PMK-28.



Scope of domestic delivery of certain taxable goods and services

GR-12 already introduced strategic taxable goods and services which are eligible for the VAT not-collected facility, namely:

- a. Strategic taxable goods:
 - i. new buildings in the form of landed houses, flats, offices, shops/shopping centres, and/or warehouses which are handed over to eligible recipients;
 - ii. domestically produced electric vehicles registered in IKN which are handed over to eligible recipients; and
 - iii. other strategic taxable goods needed for preparation, construction, relocation, and development activities in IKN received by the IKN Authority which are sourced from grants in the form of goods, located in IKN, and where grant registration has been carried out for the goods prior to the delivery of the goods.
- b. Strategic taxable services:
 - rentals of landed houses, flats, offices, shops/shopping centres, and/or warehouses provided to eligible recipients;
 - ii. construction services for certain infrastructure (with scope expansion in PMK-28);
 - iii. garbage or waste management services; and
 - iv. other services needed for preparation, construction, relocation and development activities in IKN.

PMK-28 provides that the strategic taxable goods that have enjoyed the VAT not-collected facility:

- a. can be rented to other parties; and
- b. within a period of four years from the time the taxable goods are delivered:
 - i. must be used according to its original purpose;
 - ii. not transferred to other parties; and
 - iii. must be registered with a police number in IKN if they are motor vehicles.

PMK-28 provides the details of each type of strategic taxable goods and services. We highlight below more detailed explanations of some of the items:

Landed houses and flats

The definitions and administrative requirements for landed house and flats under this facility are largely similar to the requirements under the prevailing VAT facility for this category. Several provisions under PMK-28 that are worth noting are as follows:

- ✓ The property must be delivered in a ready-to-use condition within a maximum of two years (landed house) or four years (flat unit) from the time the down payment is received.
- ✓ Houses transferred to foreign nationals must have a selling price
 of at least IDR 5 billion.
- ✓ The facility applies on one property per individual.
- ✓ The properties under entities/ministries/institutions that can utilise
 the facility is only for official housing purposes and the number of
 properties provided is at most equal to the number of employees
 who are employed in IKN in one year and are eligible to enjoy the
 Article 21 Income Tax borne by the Government facility.



Electric vehicles

Electric vehicles under strategic taxable goods are vehicles that:

- ✓ are driven by an electric motor and getting a supply of electric power from the battery directly in the vehicle or from outside;
- ✓ include private transportation vehicles and public transportation vehicles with IKN operating permit;
- ✓ include two-wheeled, three-wheeled, four-wheeled or more than four-wheeled vehicles;
- ✓ are used in IKN and/or other areas outside IKN but still within Kalimantan island; and
- ✓ are delivered by an official sales agent who is a VATable Entrepreneur (*Pengusaha Kena Pajak/PKP*) in IKN (some exceptions apply).

The domestic component level criteria for two-wheeled, three-wheeled, and four-wheeled passenger vehicles are based on the Ministry of Industry regulation. Other types of electric vehicles must meet the minimum domestic component level value of 20%.

Garbage or waste management

Garbage and/or waste processing services are waste and/or waste processing services:

- ✓ produced at IKN; and
- ✓ conducted at the waste and/or waste processing installation located at IKN – this does not apply to the Indonesian Standard Industrial Classification for remediation and management of waste and other waste activities.

In the event that a PKP delivers taxable goods resulting from waste and/or waste processing, the delivery is subject to VAT.

2) LST exemption

GR-12 stipulated that LST is exempted on the delivery of luxury residential accommodation for individuals, entities or ministries/institutions who carry out business activities in IKN. An SKB is required to apply this facility.

PMK-28 stipulates in detail the requirements for individuals and entities/ministries/institutions who carry out business activities and/or work in IKN, for which eligibility requirements are the same as under the recipient for strategic taxable services.

b. Facilities in a DM

GR-12 already stipulated the business fields that are eligible to enjoy the VAT not-collected facility on the delivery of construction services relating to developments in a DM. This facility is only available for taxpayers granted a CIT reduction in IKN and DM and who have obtained an SKTD.

PMK-28 now stipulates that the eligible business fields are for the construction of physical infrastructure or building installations in the form of the following:

- a. buildings for power plants including new and renewable energy;
- b. buildings for toll roads, seaports, and airports; and
- c. clean water supply buildings,
- as well as buildings for their operations.

Failure to fulfil the provisions above may result in the obligation to pay the previously not-collected VAT/exempted LST, depending on the circumstances.



3. Import facilities

PMK-28 provides more details to the Import Duty according to the purposes of the import facilities provided in IKN as already introduced in GR-12, as follows:

- for the public interest in IKN and DM including (temporary) antidumping import duties, (temporary) countervailing duties, (temporary) safeguard import duties, and (temporary) retaliation import duties;
- for industrial construction and development activities in IKN and DM not including (temporary) antidumping import duty, (temporary) countervailing duty, (temporary) safeguard import duty, and (temporary) retaliation import duty.

PMK-28 also adds a provision that the exemption from Import Duty and/or Import Taxes facilities on capital goods imported into IKN and DM by companies which are in industries that produce goods/services for industrial construction and development activities cannot be granted if the capital goods are transferred within a period of four years from the date of import declaration. If the capital goods are transferred within four years, then the taxpayer may be required to pay the Import Duty and/or Import Taxes and subject to various sanctions depending on the transfer circumstances.

Failure to fulfil the provisions stipulated in GR-12 and PMK-28 may result in various circumstances, including the obligation to pay previously exempted Import Duty and Import Taxes, in addition to administrative sanctions in the form of penalty depending on the circumstances.



Your PwC Indonesia Contacts:

Abdullah Azis

abdullah.azis@pwc.com

Adi Poernomo

adi.poernomo-c@pwc.com

Adi Pratikto

adi.pratikto@pwc.com

Adrian Hanif

adrian.hanif@pwc.com

Alexander Lukito

alexander.lukito@pwc.com

Ali Widodo

ali.widodo@pwc.com

Andrias Hendrik

andrias.hendrik@pwc.com

Anton Manik

anton.a.manik@pwc.com

Antonius Sanyojaya

antonius.sanyojaya@pwc.com

Avinash Rao

a.rao@pwc.com

Ay Tjhing Phan

ay.tjhing.phan@pwc.com

Brian Arnold

brian.arnold@pwc.com

Dexter Pagayonan

dexter.pagayonan@pwc.com

Enna Budiman

enna.budiman@pwc.com

Esa Perdana

esa.perdana@pwc.com

Gadis Nurhidayah

gadis.nurhidayah@pwc.com

Gerardus Mahendra

gerardus.mahendra@pwc.com

Hasan Chandra

hasan.chandra@pwc.com

Hendra Lie

hendra.lie@pwc.com

Hyang Augustiana

hyang.augustiana@pwc.com

Irene Satyanagara

irene.satyanagara@pwc.com

Kianwei Chong

kianwei.chong@pwc.com

Lukman Budiman

lukman.budiman@pwc.com

Made Natawidnyana

made.natawidnyana@pwc.com

Mardianto

mardianto.mardianto-c@pwc.com

Margie Margaret

margie.margaret@pwc.com

Marlina Kamal

marlina.kamal@pwc.com

Nicholas Sugito

nicholas.sugito@pwc.com

Nikolas Handradjid

nikolas.handradjid@pwc.com

Novie Mulyono

novie.mulyono@pwc.com

Oki Octabiyanto

oki.octabiyanto@pwc.com

Omar Abdulkadir

omar.abdulkadir@pwc.com

Otto Sumaryoto

otto.sumaryoto@pwc.com

Peter Hohtoulas

peter.hohtoulas@pwc.com

Raemon Utama

raemon.utama@pwc.com

Runi Tusita

runi.tusita@pwc.com

Ryuji Sugawara

ryuji.sugawara@pwc.com

Sujadi Lee

sujadi.lee@pwc.com

Sukma Alam

sukma.alam-c@pwc.com

Surendro Supriyadi

surendro.supriyadi-c@pwc.com

Susetiyo Putranto

susetiyo.putranto@pwc.com

Sutrisno Ali

sutrisno.ali-c@pwc.com

Suyanti Halim

suyanti.halim@pwc.com

Tien She Siung

tjen.she.siung@pwc.com

Turino Suyatman

turino.suyatman@pwc.com

William Christopher

william.christopher@pwc.com

Yessy Anggraini

yessy.anggraini@pwc.com

Yuliana Kurniadjaja

yuliana.kurniadjaja@pwc.com

Yunita Wahadaniah

yunita.wahadaniah@pwc.com

www.pwc.com/id



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