TaxFlash

New implementing regulations regarding the Tax Allowance facility

Subsequent to the issue of Government Regulation (GR) No.18/2015 (GR-18) regarding the Tax Allowance facility under Article 31A of Income Tax Law No.36/2008, the following government authorities have issued implementing regulations relevant to their functions as mandated in GR-18:

1. the Minister of Finance (MoF) Regulation No.89/PMK.010/2015 (PMK-89) dated 28 April 2015 that regulates the tax facility approval process at the MoF level and provides sanctions for lack of compliance;
2. the Head of the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal/BKPM)* Regulation No.8/2015 (BKPM-8) dated 5 May 2015 that regulates the application procedure and coordination meetings between government authorities on the taxpayer's application;
3. the Minister of Industry (MoI) Regulation No.48/M-IND/PER/5/2015 (IND-48) dated 7 May 2015 that sets investment requirements for the designated business sectors under the authority of MoI; and
4. the Minister of Energy and Mineral Resources (MoEMR) Regulation No.16/2015 (EMR-16) dated 25 May 2015 that sets investment requirements for the designated business sectors under the authority of MoEMR.

We have discussed the GR-18 and PMK-89 in our TaxFlash No.13/2015 and No.15/2015, respectively. Below is a discussion of BKPM-8, IND-48 and EMR-16.

A. Investment requirements from relevant ministers (IND-48 and EMR-16)

Compared to the revoked GR No.52/2011 (GR-52) on the Tax Allowance, GR-18 sets only the following high-level criteria for investors that are interested in utilising the Tax Allowance facility:

a) high investment value or for export purposes;
b) high absorption of manpower; or
c) high local content.

GR-18 no longer determines detailed requirements for each designated business sector and/or regions and delegates the authority to determine these to the relevant ministers. To date, the MoI and MoEMR became the first ministers that have issued their detailed requirements as most of the designated businesses listed in GR-18 are under their respective authorities.

1. *MoI Regulation IND-48*

IND-48 generally adopts detailed requirements stipulated in the GR-52 in regard to existing designated business sectors and/or regions. Changes in the requirements are made in consideration of the strategic value of the business itself, such as organic-based chemicals and steel industries whose minimum investment value is either increased or decreased depending on the end products. The pulp industry located outside Java island still requires the highest levels of investment of at least Rp 2 trillion. Decrease in investment value to be at least Rp 20 billion or employs at least 50 Indonesian workers makes repair services on ships and floating structures as the industry that requires the most minimum standard.

In terms of the use of local content (i.e. raw materials, auxiliary materials, or machines), IND-48 specifically requires at least 20% local content. This applies to all businesses.

In addition to the investment value, manpower and local content requirements, some industries are also subject to the following requirements if it is mandated in GR-18:

a) enter into partnership with small or medium enterprises;
b) in the form of integrated industry;
c) carry out transfer of technology;
d) use eco-friendly technology; and/or
e) use innovative technology.

IND-48 provides detailed definition and scope of the above requirements.

2. *MoEMR Regulation EMR-16*

Different with those businesses under the MoI's authority, the investment requirements for businesses under the MoEMR was not clearly determined in GR-52. Through the issue of EMR-16, the MoEMR has set the overall standard such as the minimum investment value for smelter constructions as Rp 100 billion on average. LNG re-gasification has become the business that requires the highest levels of investment of at least Rp 1 trillion or must use at least 25% local content. The lowest requirement is provided for electricity generators for domestic use, which only requires investment of Rp 30 billion or employs 100 Indonesian workers.

The details of IND-48 and EMR-16 are available upon request, from your usual PwC Indonesia contact.

B. BKPM-8

Should the investment meets the requirements set out in IND-48 or EMR-16, the eligible corporate taxpayer can apply for the Tax Allowance facility to BKPM. Mandatory supporting documents and standard format of correspondences are regulated in BKPM-8. This application procedure was previously regulated in MoF Regulation No.144/PMK.011/ 2012 that is revoked with GR-89. BKPM will perform a clarification on the submitted application.

To support the application, the authorised officer under the MoI or MoEMR will supply the applicant with a statement letter on the requirements fulfilment as well as the suitability of the business sector and the end products.

Once the application is ready to be processed, BKPM will carry out a Trilateral Meeting between the representatives from:

a) BKPM;
b) the relevant Ministry that administer the applicant's business sector; and
c) the Directorate General of Tax and Expert Staff from the Ministry of Finance.

This Trilateral Meeting may result in any of the following decisions on behalf of the Head of BKPM:

a) to provide a recommendation to the MoF regarding the approved taxpayer's application;
b) to reject the taxpayer's application; or
c) to postpone the result. In this eventuality, BKPM will carry out a second Trilateral Meeting to reach a final decision on the application.

The Decision from the Trilateral Meeting (including the second round of meeting, if any) must be made at the latest 15 working days after the completion of the clarification process on the taxpayer's application by BKPM.

BKPM-8 also provides additional clarifications on several matters that are already stipulated in GR-18 or PMK-89, as follows:

a) The Trilateral Meeting still needs to be carried out to process the applications based on GR-52 that are still pending at the MoF level, although the end result will be based on GR-52.
b) Taxpayers whose Tax Holiday application is rejected by the MoF, can apply to BKPM for this Tax Allowance facility by using the Tax Holiday application documents, attached with the Tax Holiday rejection letter.
c) Taxpayers who withdraw their Tax Holiday application, should submit a new application for Tax Allowance based on BKPM-8 which must be supported with a statement letter of Tax Holiday application withdrawal.

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