

TaxFlash



Amendments to tax administration regulations

The government has issued several new Ministry of Finance (MoF) regulations (*PMK*) relating to general tax provisions, in order to improve the implementation of Government Regulation No. 74/2011 (*PP-74*) which is the main implementing regulation of the General Tax Provisions and Procedures Law (*KUP Law*). Please refer to our TaxFlash No.03/2012 for highlights of PP-74.

We noted that some of the new articles are taken from PP-74 or a related Director General of Tax (DGT) Regulation, i.e. a lower-ranked regulation. The MoF seems to want to streamline the prevailing regulations by putting as much content as possible in the PMKs to minimize the issuance of lower-ranked tax regulations.

1. Reduction or elimination of administrative sanctions and reduction or cancellation of Tax Assessment Letters or Tax Collection Notices procedures

Ministry of Finance Regulation No.8/PMK.03/2013 (PMK-8) regarding the above matter is dated 2 January 2013 and will be effective from 1 March 2013. This regulation revokes MoF regulations No.542/KMK.04/2000 and No.21/PMK.03/2008.

Highlights:

- a) This new PMK provides certain conditions on the type of Tax Assessment Letters (*surat ketetapan pajak/SKP*) or Tax Collection Notices (*Surat Tagihan Pajak/STP*) that can be reduced or cancelled. As for administrative sanctions to be reduced/eliminated, previously it was at the sole discretion of the tax office. Under the new regulation, there are now limitations on the maximum reduction in certain situations, and also some requirements that must be met for taxpayers to qualify for the maximum reduction.
- b) There are certain conditions that must be met if an application for reduction/elimination/ cancellation is to be considered. The conditions may differ between each type of application.
- c) Essentially, this regulation only allows for reduction, elimination, or cancellation if a taxpayer is not concurrently engaged in any other legal process, such as an objection, to avoid any conflicting decisions for the same SKP or STP.
- d) A guideline is provided for the cancellation of a tax assessment issued without a formal findings notification and/or a closing conference for tax audits or verifications. If a cancellation is approved, the tax audit or verification process is continued by issuing a formal findings notification and/or holding a closing conference. In this case, taxpayers need to anticipate the possibility that this may lead to the issuance of a SKP with a higher tax amount than the cancelled one.
- e) In the past, if a taxpayer did not fulfil the requirements for an application, the DGT would not process it. This regulation now provides conditions to determine whether a taxpayer can or cannot resubmit an application, depending on which requirements are not fulfilled.
- f) All applications (for 2007 backwards and 2008 onwards) that are submitted after the issue of this regulation, or that are submitted before the issue of this regulation but have not been decided by the DGT at the issue of this regulation, should be processed based on this regulation.

2. Tax objection procedure

MoF Regulation No.9/PMK.03/2013 (PMK-9) is the new implementing regulation regarding tax objections, revoking the previous regulation regarding the same matter (i.e., Regulation No.194/PMK.03/2007 (PMK-194)). PMK-9 is dated 2 January 2013 and will come into effect on 1 March 2013.

Highlights:

- a) PMK-9 confirms that taxpayers can only file an objection to DGT based on the content of a tax assessment letter including a tax loss, tax due or tax withheld/collected based on the prevailing tax regulations. This means that reasons other than the content of a tax assessment letter (i.e., formal/procedural matters), if any, are not considered during the tax objection process. Such cases may be resolved by applying for a cancellation based on Article 36 of the KUP Law.
- b) This PMK also clarifies that a DGT notification that a submitted tax objection letter fails to meet the requirements cannot be regarded as a Tax Objection Decision Letter, and therefore cannot be appealed to the Tax Court. If the DGT has issued such a notification and the tax objection letter submission deadline has passed, for tax year 2008 onwards, any underpaid tax that has not been agreed during the closing conference becomes tax due since the date of issue of the tax assessment letter.
- c) The change of status of the underpaid tax (becoming payable since the assessment letter issuance) is also applicable upon a withdrawal of a tax objection letter by the taxpayer before receiving an invitation letter from the DGT to discuss the tax objection (*Surat Panggilan Untuk Hadir/SPUH*) for tax year 2008 onwards.
- d) However, under the circumstances in the two preceding paragraphs, the 50% administrative fine will not be applied. Therefore, if basis for objecting to a tax assessment is not strong and/or may lead to additional tax due, and if the interest penalty based on the tax assessment letter is lower than the 50% administrative fine, the taxpayer may want to consider withdrawing its tax objection letter to avoid the higher administrative fine.
- e) PMK-9 also clarifies that in the event that a Mutual Agreement Procedure (MAP) and a tax objection are carried out simultaneously, the DGT will uphold the tax audit result in the Tax Objection Decision Letter if the MAP is not yet concluded; however it will take into account the MAP result if a Mutual Agreement is reached prior to the finalisation of the tax objection process.

- f) This regulation is applicable for any outstanding objection letter that has not yet been decided.

3. Refunds of taxes which should have not been paid

MoF Regulation No.10/PMK.03/2013 (PMK-10) regarding refunds of taxes (income tax, Value Added Tax (VAT), Luxury-goods Sales Tax (LST), taxes/duties in relation to imports) which should have not been paid, is dated 2 January 2013 and has been effective since 1 February 2013. This regulation revokes the previous Regulation No.190/PMK.03/2007 (PMK-190) regarding the same matter.

Highlights:

- a) PMK-10 now provides refund procedures for overpaid tax from import activities. This is intended to give clear guidance for refunds of import taxes/duties, as the terms of customs notifications and assessments, such as the Customs Assessment Letter (*Surat Penetapan Pabean/SPP*), are not stated in the KUP Law.
- b) The taxpayer can be an entity or an individual, including those that are not required to have a Tax Identification Number (*Nomor Pokok Wajib Pajak/NPWP*).
- c) PMK-10 provides a wider avenue compared to PMK-190 whereby refund requests for all foreign taxpayers should be made by the tax withholders/collectors. If there is a mistake in the tax withholding/collection, only foreign taxpayers which have no Permanent Establishment (PE) in Indonesia that can ask the tax withholders/collectors to request the refund on their behalf. Foreign taxpayers having a PE in Indonesia must request the refund through the PE.
- d) PMK-190 previously stipulated that the Tax Service Office (TSO) must check the submitted refund request and issue a decision at the latest three months after the refund request is completely received, otherwise, the refund request will be deemed to have been accepted. PMK-10 does not explicitly mention a timeline for the TSO to respond to a refund request. In the light of this, the timeline may therefore follow the general provision regarding tax overpayments (i.e., 12 months after the refund request is completely received based on Article 17B paragraph (1) of KUP Law).

4. Amendment procedures

MoF Regulation No.11/PMK.03/2013 (PMK-11) regarding amendment procedures is dated 2 January 2013 and will come into effect on 1 March 2013. It revokes the previous Regulation No.19/PMK.03/2008 (PMK-19).

Highlights:

- a) Under PMK-11, assessments, notices and decisions issued in relation to Duty on the Acquisition of Land and Building Rights (*Bea Perolehan Hak atas Tanah dan Bangunan/BPHTB*) are no longer included among the formal letters that can be amended either based on a taxpayer's request or by a DGT ex-officio decision.
- b) PMK-11 also clarifies that the Tax Assessment Reduction Letter and the Tax Assessment Cancellation Letter that can be amended include those letters that were issued in regard to tax assessment letters or tax collection notices.
- c) The DGT issues ex-officio Amendment Letter in the following conditions:
 1. When there is a miscalculation in a tax assessment letter because a Mutual Agreement has been reached, but the taxpayer does not file a tax objection or a request to reduce or cancel the tax assessment letter;
 2. When there is a miscalculation in a Tax Objection Decision Letter because a Mutual Agreement has been reached, but the taxpayer does not apply for a tax appeal or withdraw an appeal request;
 3. When there is a writing mistake, a miscalculation, or a mistake in the application of certain tax provisions, noticed by the DGT but an amendment is not being requested by the taxpayer;
 4. When there is an invalid Tax Objection Decision Letter because of a miscalculation of tax due/underpaid tax for the 2007 tax year or prior years, which cannot be appealed to the Tax Court.
- d) Taxpayers may file a tax objection on an Amendment Letter mentioned in point (3) above if the underpaid tax amount has changed. This tax objection should be submitted at the latest three months after the sending of the Amendment Letter by the DGT.
- e) Outstanding amendments that have been requested by taxpayers prior to the enactment of PMK-11 should be resolved according to PMK-11.

Withholding tax exemption application procedures for pension funds – now only once a year!

A pension fund approved by the MoF is entitled to get tax exemption on incomes from interest income from time deposits, saving accounts, and *Bank Indonesia* Certificate (*SBI*) discounts. On 14 January 2013 the DGT issued PER-01/PJ/2013 (PER-01) regarding the withholding tax exemption (*Surat Keterangan Bebas/SKB*) application procedure which revokes PER-39/PJ./2010 (PER-39) regarding the same matter.

The change is mainly on the exemption period. PER-39 stipulated that an SKB is issued for a six month period, i.e., 1 March to 31 August or 1 September to 28 February. PER-01 only requires issuance of an SKB once a year, i.e. for a period of 1 January to 31 December. As a transition provision, PER-01 stipulates that for pension funds that have already obtained an SKB for the period of 1 September 2012 to 28 February 2013, they need to apply for an SKB to cover the period of 1 March – 31 December 2013 by 1 March 2013 at the latest.

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