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# TaxFlash



## *Is the 1% Final Tax on turnover applicable to your company?*

On 12 June 2013, the Government released Regulation No.46/2013 (GR-46) regarding the much talked-about final tax on taxpayers with certain turnover, effective from 1 July 2013.

We understand that GR-46 is intended for small and medium enterprises (SMEs) with the aim of easing of income tax calculation, payment and reporting for SMEs. However, it only stipulates that individual and corporate taxpayers (except permanent establishments) with gross turnover of not more than Rp 4.8 billion in one fiscal year are subject to Article 4(2) Final Tax at 1% of turnover, and does not specifically mention SMEs. However, this final tax is not applicable to:

Individuals	<ul style="list-style-type: none"><li>a. using facilities that can be disassembled, either permanently located or not</li><li>b. carrying out activities in a public area that is not intended as a place of business or trading</li></ul>
Corporations	<ul style="list-style-type: none"><li>a. that have not yet started commercial production</li><li>b. of which the gross turnover exceeds Rp 4.8 billion within one year after starting commercial production</li></ul>

The threshold of Rp 4.8 billion per annum is based on previous year data or an annualised gross turnover for the previous year if it was not a full year of operation. If during a fiscal year the gross turnover exceeds Rp 4.8 billion, the company is still subject to final tax for the current year and uses the normal income tax rate for the following year.

This final tax is not applicable to income subject to other final tax as regulated under other Government Regulations, e.g. income from construction services.

The regulation excludes income from freelance service fees (e.g. lawyers, accountants, translators, insurance agents, etc) from this final tax imposition. The Elucidation of GR-46 also implies that employment income, capital income (e.g. interest, dividends, royalties, non-business-related capital gains, etc) and other income (e.g. debt forgiveness or gifts) are also not subject to this final tax. This other income is subject to normal income tax rates.

Tax losses on this final-taxed income cannot be carried forward. This condition will not extend the five-year limitation to carry forward tax losses from other non-final income.

A Minister of Finance (MoF) Regulation will be issued detailing procedures regarding: a) final tax calculation, payment and reporting, and b) the start of commercial production.

Currently, Article 31E of the Income Tax Law provides a tax facility for corporate taxpayers with an annual turnover of not more than Rp 50 billion, who are entitled to a 50% discount on the normal tax rate (i.e. the tax rate becomes 12.5%), which is allowed on taxable income of the part of gross turnover up to Rp 4.8 billion. It is not clear whether taxpayers with gross turnover up to Rp 4.8 billion should use Article 31E Income Tax or GR-46. We believe that further clarification from the Government is needed on this issue.

## ***After e-SPT and e-Filing, now we have e-Audit!***

Rapid development in information technology (IT) has encouraged many taxpayers to implement computerised data management; this may include data required for tax audit purposes. To address this challenge, the Director General of Tax (DGT) released a new tax audit technique called e-Audit, through the issue of Circular Letter No.SE-25/PJ/2013 (SE-25), on 30 May 2013.

e-Audit is a process of understanding a taxpayer's organisation, business process and electronic systems, as well as electronic data collection and conversion, to support the tax audit process. e-Audit will be conducted by specially assigned and trained e-Auditors.

One of the e-Audit processes involves an interview with the taxpayer conducted by the e-Auditor to fill out a questionnaire that requires quite detailed and specific electronic system information, including providing the e-Auditor with the taxpayer's IP address and user ID for limited access to read and download data. Taxpayers must be ready for this process, especially those using very extensive IT systems.

## ***Group tax audit procedure***

On 30 May 2013, the DGT set out group tax audit procedures through the issue of Circular Letter No.SE-26/PJ/2013 (SE-26).

This regulation contains procedures, document templates and coordinating protocols for use between the relevant Regional Tax Offices and Tax Service Offices (TSOs), which include holding a tax audit coordinating meeting prior to issuing the formal tax audit findings. This may cater to the corresponding adjustment concept stipulated in DGT Regulation No.PER-22/PJ/2013 (PER-22) regarding tax audit procedures for taxpayers with related party transactions, although no reference to PER-22 is made.

A group tax audit is defined as concurrent tax audits of two or more taxpayers within a business group that are registered with one or several TSOs. It is interesting that SE-26 defines a group of companies as a set of two or more taxpayers within a business group which are related parties under Article 18 (4) of Income Tax Law or Article 2 (2) of VAT Law, as well as unrelated parties that are known as a business group. There is no further elaboration on what is meant by 'unrelated parties that are known as a business group'. It is possible that those companies in which a single entity has a shareholding of less than 25% or that have no control over each other may fall within this category.

## ***Third party data provision for dispute resolution purposes***

In order to be in line with the issue of GR-74 in 2011, the MoF issued Regulation No.87/PMK.03/2013 (PMK-87) on 18 April 2013 as the new procedure by which the MoF and DGT are to request documents

from third parties with secrecy obligations (i.e. a bank, public accountant, notary, tax consultant, legal consultant, financial consultant, customer, supplier, administration office, or other third party having information relevant to the disputed taxpayer). PMK-87 revokes the previous MoF Regulation No.201/PMK.03/2007 (PMK-201).

One key addition stipulated in PMK-87 is that the deadline for third parties to provide requested documents can be extended to seven working days from the permission issuance if the request needs permission from the authorities. PMK-87 also provides a standard format of document request letter and warning letter.

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