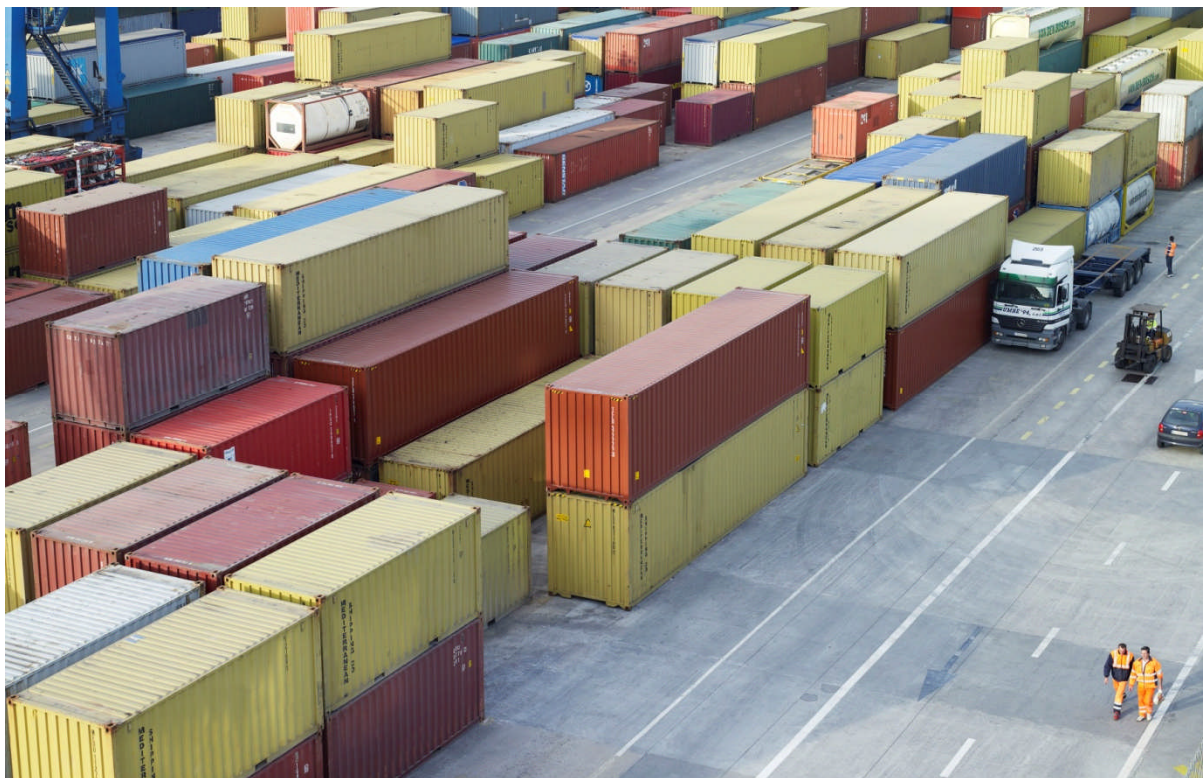


TaxFlash



New guidelines on the requirements for public companies tax cut facility

On 21 November 2013 the government issued Government Regulation (GR) No.77/2013 (GR-77) regarding a reduced income tax rate for listed companies and revoked GR No.81/2007 regarding the same matter. This regulation fine tunes the requirements for receiving a tax rate of 20% (a cut of 5% below the generally applicable corporate tax rate of 25%).

The changes are highlighted in bold below:

1. At least 40% of the paid-in capital is **listed for trading in the Indonesian Stock Exchange (IDX) and put in the collective custody of a custody and settlement institution** (previously 40% of publicly owned shares).
2. The shares in point 1 must be owned by at least 300 parties.
3. Each party in point 2 can only own less than 5% of paid-in capital.
4. Requirements 1 – 3 above must be maintained at least **183 days** in one fiscal year (previously 6 months).

The custody and settlement institution in point 1 follows the regulations in the capital market. Currently, the position is held by PT Kustodian Sentral Efek Indonesia/KSEI (Indonesian Central Securities Depository).

GR-77 provides examples of conditions which meet and do not meet the requirements; the most important points are:

- The following shares cannot be included in calculating the 40% threshold:
 - Shares listed for trading in an offshore stock exchange
 - Shares traded outside a stock exchange
 - Shares in the form of certificate (*warkat*) and not put in the collective custody of the custody and settlement institution
- It is emphasised that less than 5% of paid-in capital corresponds to a maximum of 4.99%
- If any public parties own 5% or more of paid-in capital, the company can still enjoy the tax cut if all of the requirements are still fulfilled. An example of this condition:
 - 50% of the paid-in capital is recorded for trading in the IDX and put in the collective custody of KSEI
 - This 50% portion is owned by 400 parties
 - There is one party who owns 7%, and the rest own less than 5% each
 - This condition is maintained for 234 days in a year.

In this case, the company can still enjoy the tax cut because there are still 399 parties owning 43% (50% - 7%) of the paid-in capital with an ownership of less than 5% each, and the condition is maintained for more than 183 days of the tax year.

Economic Policy Phase II

Towards the end of 2013, the Government finally released three new Minister of Finance (MoF) regulations as the implementation of Economic Policy Phase II, focusing on limiting imports of certain consumer products and relaxation on the import of goods for export purposes. A summary of the Economic Policy Phase II is as follows:

1. Article 22 Income Tax on imports of certain consumer products by all importers is increased to 7.5%

On 6 December 2013, the MoF issued Regulation No.175/PMK.011/2013 (PMK-175) to increase the Article 22 Income Tax (*PPh 22*) rate on imports of certain consumer products by all importers from 2.5% to 7.5%. Previously, the *PPh 22* rate on imports of goods by importers owning an Importer Identification Number (*Angka Pengenal Impor/API*) was 2.5% while the rate of 7.5% was applicable only to imports without an API.

The purpose of PMK-175 is to limit imports of certain consumer products (excluding food), such as motor vehicles, household appliances, cellular phones, clothes, footwear, jewellery, etc. A complete list of the goods subject to *PPh 22* at 7.5% is available upon request, from your usual PwC Indonesia contact.

PMK-175 will come into effect 30 days since the enactment of the regulation (i.e. from 5 January 2014) and serves as a third amendment to MoF Regulation No.154/PMK.03/2010 regarding Article 22 Income Tax

Collection, which was last amended by MoF Regulation No.146/PMK.011/2013.

2. Relaxation on tax exemption and drawback facilities for exports

With the aim to boost export and investment as well as strengthening export-oriented industries' competitiveness, the MoF reinforced the ease of imports used in the production of goods which will be fully exported (*Kemudahan Impor Tujuan Ekspor/KITE*) by issuing the following regulations:

- a) Regulation No.176/PMK.04/2013 (PMK-176) as an amendment to Regulation No.254/PMK.04/2011 (PMK-254) regarding import duty exemption on imports of goods and materials to be processed, assembled or installed on export-oriented goods; and
- b) Regulation No.177/PMK.04/2013 (PMK-177) as an amendment to Regulation No.253/PMK.04/2011 (PMK-253) regarding import duty drawback on imports of goods and materials to be processed, assembled or installed on export-oriented goods.

Export volume and the value of import duty on imported raw materials subject to these KITE facilities are generally the basis on which a company chooses to use either the exemption or the drawback facility.

Both of the regulations revoke Article 17 (2) of MoF Regulation No.147/PMK.04/2011 regarding Bonded Zone as amended by Regulation No.120/PMK.04/2013 and Article 13 (3) MoF Regulation No.143/PMK.04/2011 regarding Bonded Warehouse. These regulations are dated 6 December 2013 and will come into effect 60 days since the enactment (i.e. from 4 February 2014).

Key changes in both of the regulations are set out below.

- a) *Exemption facility on import duty, Value Added Tax (VAT), and/or Luxury-goods Sales Tax (LST)*

Facility mechanism

- Under the exemption facility, companies need to pay upfront a guarantee in the value of import duty, VAT and/or LST of the imported raw materials. The exemption will be given through a refund of the guarantee once the report on the use of the imported raw materials has been verified.

VAT and/or LST facility

- In addition to the existing import duty exemption, VAT and/or LST are also exempted on imports of raw materials from outside the Customs Area and on purchases from Bonded Warehouses, Bonded Zones, Free Trade Zones, and/or other economic zones as determined by the Government.
- VAT and/or LST are not due on the deliveries of imported raw materials from eligible companies to subcontractor(s) or on the resending of finished products from subcontractor(s) to the company.

Applicable imported raw materials

- Previously, the exemption facility did not apply to raw materials used in production that are not integrated to the finished products. Now, exemption covers all imported raw materials.

Application

- PMK-176 streamlines the application process so that a company needs only one Company Registration Number (*Nomor Induk Perusahaan/NIPER*) application to enjoy the exemption, when they previously needed two separate applications (i.e. NIPER and exemption application). The requirements for both previous applications still apply.
- Under certain conditions, the company can now request an extension of the exemption period subject to Head of Regional Office or Main Service Office (*Kantor Pelayanan Utama/KPU*) approval.

Use of finished products by another company

- Finished products must be exported; however, PMK-176 provides an avenue for transferring finished products as raw materials to another company that also has an exemption or drawback facility for export purposes.

Reporting

- Reports on the use of imported raw materials to the Head of Regional Office/KPU must be done no later than 30 days after the end of the exemption period (previously, they had to be done during the exemption period on a semi-annual basis).

Damaged/rejected finished products and raw materials

- PMK-176 clarifies that damaged/rejected finished products must be destroyed and damaged/rejected imported raw materials must be destroyed or exported. Related guarantees will be returned for these products at import duty, VAT and/or LST value.

License suspension/revocation

- PMK-176 adds three new conditions where NIPER can be suspended, as follows:
 - The company did not put a signboard in every stockpiling and factory location which at the minimum should stipulate the company's name and the NIPER information;
 - The company did not satisfy subcontract requirements (previously consequence of this incompliance was subject to administrative fine ranging from 100% to 500% of the import duty due); and/or
 - The company did not carry out import and export that utilise the facility simultaneously during the exemption period (previously consequence of this incompliance was revocation of NIPER).

Most of the conditions where NIPER can be revoked are similar to PMK-254. PMK-176 revokes administrative fines ranging from 100% to 500% of import duty due on certain conditions.

Bonded Zone facility

- Companies can now also enjoy the Bonded Zone facility simultaneously with this exemption facility, as long as it is in different areas.

Authorised Economic Operator (AEO) and Main Partner (*Mitra Utama/MITA*)

- Companies in the form of an AEO or MITA (either MITA Priority or MITA Non-Priority) may enjoy special benefits under this exemption facility, for example they:
 - Can pledge a guarantee in the form of a corporate guarantee;
 - Need only notify (no approval needed) the Head of Regional Office/KPU if they want to unload or pile up the imported raw materials at locations different from those stated in NIPER;
 - Can fully subcontract production activities due to capacity limitation.

Transitional provisions

- Companies must update their NIPER no later than 12 months after the effective date of PMK-176, otherwise the NIPER will be suspended;
- Unfinished reports on the use of raw materials imported under PMK-254 should be completed in accordance with PMK-254. However, the report must be done based on PMK-176 if the raw materials used for production were sourced from imported raw materials under PMK-254 and PMK-176;
- Reports in audit stage will be processed in accordance with PMK-254;
- Tax Exemption Letters on VAT and/or LST that are still applicable at the effective date of PMK-176, are considered valid.

b) *Drawback facility on import duty*

Facility mechanism

- Under the drawback facility, companies need to pay upfront an import duty of the imported raw materials. The import duty related to the exported finished products will be refunded through the issue of Payment Assessment Letter of Import Duty Drawback Facility (*Surat Ketetapan Pembayaran Fasilitas Pengembalian Bea Masuk/SKP.FPBM*) upon application of the company.

Applicable imported raw materials

- PMK-177 revokes the provision where drawback cannot be provided on raw materials used in production that are not integrated to the finished products.

Reporting

- The company no longer needs to submit a report on the use of imported raw materials prior to production.

Others

- Most of the other provisions under this drawback facility are the same as the exemption facility under PMK-176.

Improvement in the application of ASEAN Trade in Goods Agreement (ATIGA) scheme

The ATIGA scheme aims to increase inter-ASEAN trade by reducing import duty rates on most goods to 0%. Through the issuing of MoF Regulation No.178/PMK.04/2013 (PMK-178) on 9 December 2013, the government applies import duty under ATIGA scheme using a **self-**

certification system. This new system will be applicable since 8 January 2014 (30 days after the issuance date). This system is intended to improve the mechanism by applying a self-certification system in accordance with the Memorandum of Understanding among the Governments of the participating members of ASEAN on the Second Pilot Project for the implementation of a regional self-certification system (MoU 2nd SCPP). The participating countries are Indonesia, Laos, and the Philippines.

Under this system, Certified Exporters can issue an invoice declaration which includes self-certification, which states that the exported goods have satisfied the Rules of Origin and should be considered ASEAN Originating Products under ATIGA. This invoice declaration can act as a substitute for the Certificate of Origin from the issuing authority in the origin country. The data on Certified Exporters is available from the ASEAN Secretariat. The Certified Exporters cannot issue a Back-to-Back Invoice or use invoice declaration in a Third Country Invoicing.

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