



## Indonesia Tax Info

### New Regulation on Permanent Establishments in Indonesia

The Minister of Finance has issued Regulation Number 35/PMK.03/2019 ("PMK-35") in response to the development of cross-border business model that involves Foreign Tax Subject, and aims to provide legal certainty for Foreign Tax Subject who conducts business or activities through a Permanent Establishment ("PE") in Indonesia. PMK-35 comes into effect starting from 1 April 2019.

PMK-35 provides explanation and interpretation on PE determination for Foreign Tax Subject as stipulated in the Income Tax Law. Whereas in the implementation of Double Tax Avoidance ("DTA") Agreement, the PE determination still follows the criteria and treatment according to the applicable DTA.

PMK-35 now stipulates the following matters more clearly:

1. The main criteria of PE establishment is the existence of a permanent business place in Indonesia used by Foreign Individual or Entity to run its business or activity. Business place is defined as all kind of place, space, facility, or installation, including machine or equipment used by Foreign Individual or Entity, regardless whether it is rented or owned or whether the Foreign Individual or Entity has legal rights to the place in order to run its business or activity in Indonesia pursuant to the coverage of PE stipulated in Article 2(5) of Income Tax Law. The exemption for business place shall only cover the business place used for electronic data storage/processing in Indonesia and if Foreign Individual or Entity only have limited access to run the business place.

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2. For the implementation of DTA, the business that only constitutes preparatory or auxiliary activity shall be excluded from the definition of PE. However, PMK-35 clarifies that PE shall exist if the preparatory or auxiliary activities are provided to other parties.
3. PMK-35 provides details on construction project, which includes construction, installation, and assembly project in Indonesia that is performed outside Indonesia or subcontracted to local or foreign subcontractor. PMK-35 clarifies the calculation of time test and the applicability of DTA.
4. PMK-35 provides clarification on the criteria of a Service PE to include provision of services by employee or other personnel employed by Foreign Individual or Entity for 60 days in any 12-month period and expands it to subcontractor of the Foreign Individual or Entity and the performance of the service in Indonesia and the delivery of the service to parties in Indonesia or to overseas.
5. PMK-35 clarifies that a dependent agent receiving instruction for the interests of Foreign Individual or Entity in running its business or activities or not bearing its own risks of business or activity constitutes PE. If the dependent agent only conducts preparatory or auxiliary activities, it does not constitute PE. Foreign Individual or Entity that carries out business or activities in Indonesia using agent, broker, or intermediary with independent status shall not constitute PE so long as the agent, broker, or intermediary in fact acts fully in the ordinary course of their business. PMK-35 acknowledged the applicability of DTA on time test where it applies.
6. Agent or employee of insurance (excluding reinsurance) company not established or domiciled in Indonesia shall constitute PE if they receive insurance premium or bear risks in Indonesia, where the insured are resided, domiciled, or located in Indonesia.
7. A PE shall register with the Tax Office no later than one month after the start of business or activity in Indonesia to obtain Tax Identification Number (NPWP). If the PE does not register, the Director General of Taxation ("DGT") may issue the NPWP ex officio to the PE. Moreover, PE shall be required to register the business to be confirmed as Taxable Entrepreneur no later than the end of subsequent month after the gross turnover and/or income exceeds the threshold for a small-scale entrepreneur, i.e. IDR 4.8 billion per year.
8. The PE's NPWP shall be revoked in the event that the PE ceases its business activities in Indonesia. While its Taxable Entrepreneur status shall also be revoked when the Foreign Entrepreneur no longer meets the requirements to serve as Taxable Entrepreneur.

### **Waiver of Administrative Sanction for Late Submission of 2018 Annual Income Tax Returns for Certain Individual Taxpayers**

The DGT has issued Regulation Number KEP-95/PJ/2019 ("KEP-95") to waive the administrative sanction of IDR 100,000 for late submission of Annual Income Tax Return for certain individual taxpayers who submits his/her Annual Income Tax Return for Fiscal Year 2018 on 1 April 2019. These individual taxpayers are those who conduct bookkeeping or recording, and individuals who are subject to final tax, including those with small-scale businesses.

However, in the event there are still tax payable, it must be paid no later than 31 March 2019.

KEP-95 comes into effect starting from 29 March 2019.

# Contact Persons

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