



Indonesia Tax Info

New Implementing Regulation Provides More Guidance on Utilization of Tax Allowance Facility

The Minister of Finance (“MoF”) has issued Regulation Number 11/PMK.010/2020 (“PMK-11”) as an implementing regulation to Government Regulation Number 78 Year 2019 (“GR-78”) regarding Tax Allowance Facility. PMK-11 revokes MoF Regulation Number 89/PMK.010/2015 (“PMK-89”).

PMK-11 simplifies the application process for tax facility and provides clearer and better guidance on the utilization of the various facilities under the tax allowance scheme. The salient points are summarized as follows:

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1. Amendment to the definition of commercial production commencement

PMK-11 provides definition to commercial production commencement, i.e., the first instance when the production output or service from the main business activity is sold or delivered or used for own further processing.

As the application for the facility must be submitted before the commencement of commercial production, we need to observe that the determination of commercial production commencement may potentially be deemed earlier than what was regulated under PMK-89.

2. Replacement of fixed assets

PMK-11 addresses the procedures for replacing fixed assets by providing guidance and examples on how such replacement may trigger an adjustment to the amount of investment allowance. This procedures were absent in PMK-89. PMK-11 also confirms that the new fixed assets used as replacement shall not be eligible for the accelerated depreciation or amortization.

PMK-11 no longer requires taxpayers to report a fixed assets list every semester. However, in the event of any fixed asset granted with tax allowance facility is replaced, taxpayers must report such replacement to the Directorate General of Taxation ("DGT").

3. Utilization of additional tax loss carried forward facility

Taxpayers who obtain tax allowance facility for part of their investment shall be allowed to maintain a separate bookkeeping or to have a combined bookkeeping for all of their investments. If a taxpayer chooses combined bookkeeping, PMK-11 provides an example on how to calculate the tax loss carried forward that can be utilized after the fifth year.

Cost and benefit analysis should be carried out when determining whether a taxpayer prefers separate or combined bookkeeping, considering the significant costs fiscally incurred during the initial year of commercial production due to additional deduction from investment allowance and accelerated depreciation and amortization.

4. Shift of application checking process to later stage

The application for the following events now have to be done through OSS system:

- a. Tax allowance facility;
- b. Request for utilization of tax allowance facility; and
- c. Request for additional tax loss carried forward facility.

Under PMK-89, MoF could take months to approve for tax allowance facility as recommendation from Capital Investment Coordinating Board ("BKPM") was required. PMK-11 simplifies the process through the use of OSS system, and MoF must issue its decision within 5 working days. PMK-11 requires the DGT to conduct verification on the application process and the relevant documentations filed by taxpayers upon granting the decision on commercial production commencement.

Taxpayers that have obtained tax allowance facility should ensure at all time that their application and supporting documentations are completed and implemented in accordance with the prevailing regulations, as DGT may revoke the tax allowance facility in case of:

- a. The taxpayer does no longer fulfil the criteria for tax allowance facility;
- b. The tax allowance facility is applied not in accordance with the required procedures; and/or
- c. The taxpayer replaces fixed assets that have been granted with tax allowance facility not in accordance with the applicable procedures.

Taxpayer whose tax allowance facility is revoked will be imposed with sanction in accordance to the prevailing tax regulations and will no longer be eligible for tax allowance facility.

5. Transitional provisions

PMK-11 provides transitional provisions as follows:

- a. Tax allowance facility application under GR-18 and GR-78 that has been submitted to BKPM before the issuance of PMK-11 is to be processed in accordance with PMK-89;
- b. Principle license, investment license, and investment application that were issued by BKPM after GR-18 was issued up to the issuance of GR-78, or business license issued by OSS system prior to GR-78 issuance can apply for tax allowance facility under PMK-11 if all of the following conditions are satisfied:
 - The license has not been issued with a granting or rejection decision related to tax allowance facility under GR-18;
 - The investment fulfils the required criteria under GR-78;
 - The facility is applied prior to the commencement of commercial production; and
 - The facility is applied no later than one year after the issuance of GR-78 (i.e., one year after 12 November 2019).

Considering that PMK-11 has now provided clearer guidance, Companies that are planning for new investments or business expansion should monitor the application deadline.

PMK-11 is effective from 11 February 2020.

Indonesia – Tajikistan Tax Treaty Is Now In Effect

Following the ratification of the Double Taxation Avoidance (“DTA”) Agreement between Indonesian Government and Tajikistan Government through the Presidential Regulation Number 76 Year 2019 in December 2019, the DGT has issued Circular Letter Number SE-03/PJ/2020 to inform that the DTA has come into force starting from 13 December 2019.

It further stipulates that the DTA is effective for the following:

1. Tax withheld at source on income derived on or after 1 January 2020; and
2. Taxes on other income from the fiscal year beginning or after 1 January 2020.

Please refer to [Tax Info December 2019](#) edition for the maximum withholding tax rates applicable and permanent establishment time test under this DTA.

Updates on Administrative Requirements for Submission of Tax Judicial Review Request to Supreme Court

The Head of Tax Court has issued Decision Letter Number KEP-01/PP/2020 (“KEP-01”) recently to stipulate the administrative requirements for applying judicial review to Tax Court. KEP-01 serves as implementing regulation to the Head of Supreme Court Regulation No. 7 Year 2018 and confirms the administrative procedures in applying the judicial review and submission of contra memory of judicial review such as the validity of the signatory and the date of the filed documents.

Taxpayers who wish to submit judicial review request or to submit contra memory of judicial review should observe the administrative requirements as stipulated in KEP-01.

Fairer Tax Collection to Tax Bearers Who Is a Shareholder or Capital Owner Who is Not Member of Corporate Management

In their effort to collect outstanding tax payable, the tax office carries out a series of tax collection procedures in accordance to the prevailing tax regulations. One of the tax collection procedures is through issuance of distress warrant.

On 16 January 2020, DGT issued Circular Letter Number SE-01/PJ/2020 ("SE-01") to standardize the current tax collection practices within the tax offices. SE-01 states the steps of tax collection actions and also emphasizes that the tax collection practice to corporate staxpayer should consider the level of responsibility of tax bearers as follows:

1. The-relevant corporate taxpayer;
2. Management of the corporate taxpayer;
3. Shareholder or capital owner of the corporate taxpayer.

In the event that the tax bearer is a shareholder or capital owner and also acting as the corporate management, SE-01 stipulates that the settlement of the tax payable should consider the level of responsibility of the tax bearer as follows:

1. an entire tax payable in case of tax bearer is acting as the corporate taxpayer itself or as the management of the corporate taxpayer;
2. a prorated amount of the tax payable in case of the tax bearer is the shareholder or capital owner who is not a member of corporate taxpayer management.

By issuing SE-01, the DGT is hopeful to provide a clearer and fairer practice across tax offices as to the level of liability that a shareholder or capital owner has on tax payable.

CUSTOMS FOCUS

Updates on Bonded Warehouse Regulation

With the aim to support Indonesian economic growth through customs facility, MoF has amended the provisions governing Bonded Warehouse by the issuance of Regulation Number 155/PMK.04/2019 ("PMK-155"), which revokes PMK No. 143/PMK.04/2011 ("PMK-143"). MoF eases Bonded Warehouse entrepreneurs by granting permit that remains valid until revoked, extension of stockpiling period, etc. Summary of salient changes are described in the table below:

Description of changes	PMK-143 (Former)	PMK-155 (Current)
Period of validity for Permit of Bonded Warehouse Administrator/Entrepreneur	Approval for a location to serve as Bonded Warehouse and Permit of Bonded Warehouse Administrator is valid for maximum 5 (five) years (extendable) .	<ol style="list-style-type: none"> 1. Approval for a location to serve as Bonded Warehouse and Permit of Bonded Warehouse Administrator/Entrepreneur and Bonded Warehouse Entrepreneur Acting as Bonded Warehouse Administrator ("PDGB") shall remain valid until the Bonded Warehouse Permit is revoked. 2. Bonded Warehouse Administrator/Entrepreneur is not required to extend the permit.

Description of changes	PMK-143 (Former)	PMK-155 (Current)
Requirements for Bonded Warehouse Administrator/Entrepreneur status and mandatory use of IT Inventory system for management of goods input and output	Companies applying for Bonded Warehouse Administrator/Entrepreneur must submit the following documentations: <ol style="list-style-type: none"> 1. Proof of ownership for place, building, or area; 2. Permit of Business Location; 3. Proof of Taxable Entrepreneur registration and proof of receipt for submission of Corporate Income Tax Return for the last fiscal year. 	Companies applying for Bonded Warehouse Administrator/Entrepreneur must submit the following documentations: <ol style="list-style-type: none"> 1. Business Registration Number; 2. Business Permit; 3. Obtained Taxpayer status confirmation; 4. Proof of ownership for place, building, or area; 5. Proof of as Taxable Entrepreneur registration and proof of receipt for submission of Corporate Income Tax Return for the last fiscal year; 6. Recommendation from Bonded Warehouse Administrator (for Bonded Warehouse Entrepreneur); 7. Implementing IT Inventory system.¹
Restriction for granting Permit of Bonded Warehouse Administrator/Entrepreneur	The responsible person in the company, who have committed customs and/or excise criminal activity and has been convicted and declared bankrupt by a court, shall be restricted to obtain Permit of Bonded Warehouse Administrator/Entrepreneur or PDGB, for 10 (ten) years from end of serving imprisonment or declaration of bankruptcy.	The responsible person in the company shall be restricted to obtain Permit of Bonded Warehouse Administrator/Entrepreneur or PDGB in the event: <ol style="list-style-type: none"> 1. Committing customs, excise, and/or tax criminal activity and has been convicted with legal binding force. Restriction applies for 10 (ten) years from end of serving imprisonment; 2. Declared bankrupt by a court. Restriction applies for 10 (ten) years from the declaration of bankruptcy; 3. Having outstanding liability in the field of customs, excise, and/or tax.
Period of goods stockpiling in Bonded Warehouse	Goods stockpiling in Bonded Warehouse is permitted for maximum 1 (one) year since the date of import declaration.	Goods stockpiling in Bonded Warehouse is permitted for maximum 2 (two) years since the date of initial import from outside Customs Area, bonded logistics center, Special Economic Zone ("KEK"), or other economic zone determined by the Government into Bonded Warehouse.
Form of Bonded Warehouse	Bonded Warehouse may take the form of the following: <ol style="list-style-type: none"> 1. Bonded Warehouse for industrial activity support, i.e. industrial company located in other places within Customs Area (local) and/or Bonded Area; 2. Bonded Warehouse for distribution center of duty-free shop; 3. Bonded Warehouse for transit. 	Bonded Warehouse may take the form of the following: <ol style="list-style-type: none"> 1. Bonded Warehouse for industrial activity support, including KEK, Free Trade Zone, Other Economic Zone, Customs Duty Exemption, and/or refund of import duty; 2. Bonded Warehouse for distribution center of duty-free shop; 3. Bonded Warehouse for transit.

PMK-155 came into force 30 days after its stipulation on 4 November 2019.

¹ Real time IT Inventory system with bookkeeping through online channel with goods management traceability to Bonded Warehouse for audit implemented by the Directorate General of Customs and Excise as well as the DGT.

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