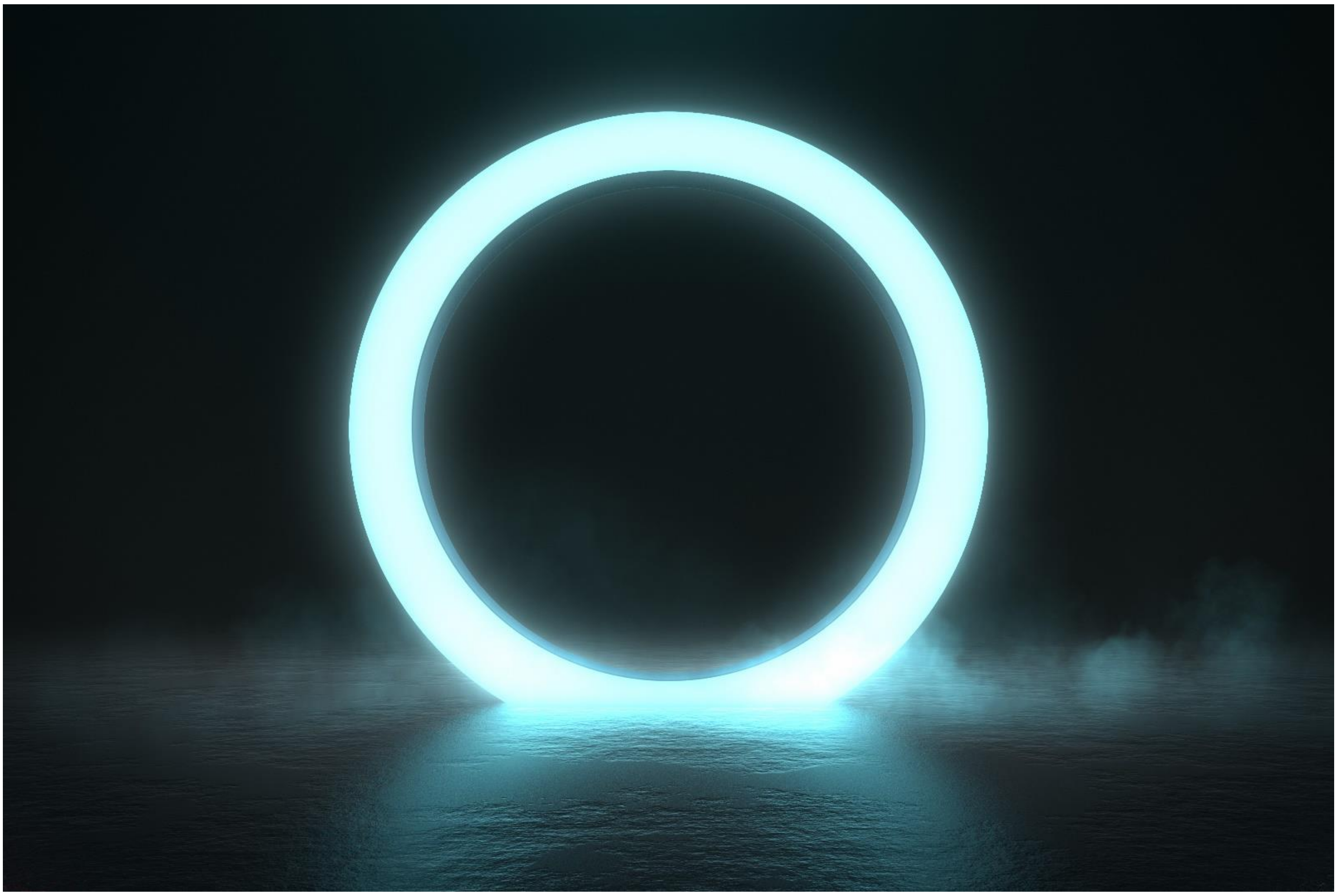


Indonesia Tax Info February 2022

Update on regulations providing tax incentives during the COVID-19 pandemic

Since the COVID-19 pandemic has not subsided, Indonesia's Minister of Finance (MoF) in January and February 2022 issued several regulations to extend some of the tax incentives that have expired as of 31 December 2021, namely:

- MoF Regulation Number 3/PMK.03/2022 (PMK-3) dated 21 January 2022, to reintroduce some of the incentives provided under MoF Regulation Number 9/PMK.03/2021 (as amended by 82/PMK.03/2021 and 149/PMK.03/2021) (PMK-9) (please refer to *Tax Info February 2021*, *Tax Alert July 2021*, and *Tax Alert November 2021*);
- MoF Regulation Number 5/PMK.010/2022 (PMK-5) dated 2 February 2022, to provide the government-borne luxury-goods sales tax (LST) incentive for the sale of qualifying vehicles that was previously stipulated under MoF Regulation Number 31/PMK.010/2021 (as amended by 77/PMK.010/2021 and 120/PMK.010/2020) (PMK-31) (please refer to *Tax Info April 2021*, *Tax Info July 2021*, and *Tax Info September 2021*); and

In this issue:

- MoF Regulation Number 6/PMK.010/2022 (PMK-6) dated 2 February 2022, to provide the government-borne VAT incentive for the sale of qualifying houses that was previously stipulated under MoF Regulation Number 103/PMK.010/2021 (PMK-103) (please refer to *Tax Info August 2021*).

PMK-3

Unlike PMK-9, the number of incentives under PMK-3 are reduced to cover only:

- Exemption from Article 22 income tax on imports;
- A 50% reduction of monthly tax installments; and
- Article 4(2) final income tax on certain construction services borne by the government.

PMK-3 is effective as from 25 January 2022.

The following incentives that were previously provided under PMK-9 were not re-introduced by PMK-3, namely:

- *Employee income tax borne by the government;*
- *Final tax for small and medium enterprises borne by the government; and*
- *Preliminary refund for VAT overpayment.*

Exemption from Article 22 income tax on imports

Exemption from Article 22 income tax on imports is available for taxpayers whose business classification (*Klasifikasi Lapangan Usaha* (KLU)) is among the 72 KLUs listed under PMK-3.

To benefit from the facility, the taxpayer must submit a request for a tax exemption letter (*surat keterangan bebas* (SKB)) to the tax office via the tax office website. If the taxpayer is eligible for the incentive, the tax office will issue the SKB; otherwise, the Directorate General of Taxation will issue a letter rejecting the request. The SKB is valid from the date of the issuance until 30 June 2022. If the taxpayer changes its KLU, the SKB will become invalid as from the date of change.

Taxpayers benefitting from the incentive must submit monthly incentive reports to the tax office website by the 20th day after the end of the fiscal month.

A 50% reduction in monthly tax installments

A 50% reduction of monthly tax installments will be provided to taxpayers whose KLU is among the 156 KLUs listed in PMK-3.

To benefit from the incentive, the taxpayer must submit a notification letter to the tax office via the tax office website. The tax office will then issue a notification letter to the taxpayer confirming whether or not the taxpayer qualifies for the incentive. The incentive applies from the fiscal period during which the taxpayer submits the notification letter until June 2022. If the taxpayer changes its KLU, the incentive will cease to apply as from the date of change.

To apply the incentive as from January 2022, the notification letter must be submitted within 30 days of the date on which PMK-3 becomes effective, i.e., by 24 February 2022.

Taxpayers benefitting from the incentive must submit monthly incentive realization reports to the tax office website by the 20th day after the end of the fiscal month.

Article 4(2) final income tax on certain construction services borne by the government

Article 4(2) income tax on certain construction activities may be borne by the government. Taxpayers eligible for this incentive are those that are instructed by the relevant government institutions to carry out a specific labor-incentive program considered as vital for the agricultural sector, i.e., the Acceleration Program to Improve Irrigation Water (*Program Percepatan Peningkatan Tata Guna Air Irigasi* (P3-TGAI)).

Tax withholders that apply the incentive must submit an incentive realization report, including its amendments, to the tax office website by 30 September 2022.

The incentive is available for the fiscal period of January to June 2022.

Other matters

Taxpayers must already have submitted the annual income tax return for fiscal year 2020 before applying for the tax relief for Article 22 income tax on imports and monthly tax installments under PMK-3. An exception applies for taxpayers that are not required to submit the return.

Taxpayers that have benefitted from the reliefs under the previous MoF regulations must submit a further notification or reapply to the tax office, as appropriate, if they wish to utilize the reliefs under PMK-3.

PMK-3 allows taxpayers that utilize reliefs under PMK-9 to submit the realization reports (including report amendments) for fiscal year 2021 by 31 March 2022; otherwise, the reliefs will become invalid for that period and the unpaid tax must be paid.

PMK-5

To maintain purchasing power in the automotive industry, the MoF has issued PMK-5 to provide a tax incentive in the form of LST payable on sale of certain types of vehicle being borne by the government.

Under PMK-5, sales of the following types of vehicle, which meet the requirement of a minimum 80% local content, are eligible for the associated LST to be borne by the government:

Type of vehicle	LST rate	LST borne by the government
Energy saving and affordable four-wheeled vehicles with an on-the-road price of IDR 200 million or less, which: • Have a spark ignition engine, a cylinder capacity of up to 1,200 cc, and fuel consumption of a minimum of 20 kilometers/liter (km/l), or CO_2 emission level up to 120 grams/kilometer (gr/km); or • Are diesel or semi diesel, with a cylinder capacity of up to 1,500 cc, and fuel consumption of at least 21.8 km/l or a CO_2 emission level of up to 120 gr/km.	15%	• 100% (1 January to March 2022); • 66⅔% (1 April to June 2022); and • 33⅓% (1 July to 30 September 2022).

Type of vehicle	LST rate	LST borne by the government
Passenger vehicles with a capacity of less than 10 people, a cylinder capacity of up to 1,500 cc, and an on-the-road price between IDR 200 million and IDR 250 million, which: • Have a spark ignition engine, fuel consumption of more than 15.5 km/l, or a CO_2 emission level of less than 150 gr/km; or • Are diesel or semi diesel, with fuel consumption of more than 17.5 km/l, or a CO_2 emission level of less than 150 gr/km.	15%	50% (1 January to 31 March 2022)

The list of vehicles eligible for the facility will be regulated by the Minister of Industry.

A VAT-registered business (*pengusaha kena pajak* (PKP)) that sells a qualifying vehicle must issue a VAT invoice using the transaction code "01" and stamped/affixed with "*PPnBM DITANGGUNG PEMERINTAH …% EKS PMK NOMOR 5/PMK.010/2022 SENILAI Rp …*" The VAT invoice must be reported in the VAT return for the relevant month. VAT returns and a detailed list of vehicles being delivered will be treated as incentive realization reports provided that they are submitted by 31 October 2022 (or 30 April 2022, depending on the last period for which the VAT incentive is provided). The PKP must provide a detailed list of the vehicles being delivered within three working days after the fiscal month ends.

PMK-5 has come into effect as from 2 February 2022. The regulation includes a transitional provision under which VAT invoices issued in January 2022 for the sales of vehicles that would have been eligible for the incentive may be amended. The VAT that is borne by the government as a result must be returned to buyers.

VAT borne by the government must be repaid if the tax authorities discover that the delivery of the vehicle does not meet the criteria for the incentive.

PMK-6

Similar to PMK-5, the MoF is of the opinion that an incentive is still necessary to maintain purchasing power in the property sector and, therefore, has issued PMK-6 to extend the incentive under the expired PMK-103, with some modifications.

PMK-6 introduces a government-borne VAT facility on the sale of landed houses (broadly residential properties with some surrounding land or a garden and including houses used as shops and offices) and residential units by a PKP to an individual homeowner (buyer). The property has to be new, ready-to-use, not handed over previously, and registered with the Ministry of Public Works and Housing (MPWH) and/or People's Housing Savings Management Body (*Badan Pengelola Tabungan Perumahan Rakyat* (BP TAPERA)) by 31 March 2022.

PMK-6 reduces the percentage of VAT to be borne by the government to 50% if the selling price of the property does not exceed IDR 2 billion, and 25% if the selling price is between IDR 2 billion and IDR 5 billion (previously, the percentages of VAT borne by the government were 100% and 50%, respectively).

The facility is available for delivery of landed houses and residential units between 1 January and 30 September 2022, evidenced by the issuance of minutes of handover (*berita acara serah terima*).

The government-borne VAT facility on the sale of landed houses and residential units is extended until 30 September 2022.

If the buyer made an advance payment or installment payment in respect of the acquisition before 2 February 2022 (the date PMK-6 comes into effect), the facility is available subject to the following conditions:

- The initial advance payment or installment payment is made on or after 1 January 2021;
- The date of sale (as evidenced by the minutes of handover) falls between 1 January 2022 and 30 September 2022; and
- The facility will be provided on the remaining installments and settlements that paid between 1 March 2021 and 30 September 2022.

The PKP selling the property must issue a VAT invoice and disclose certain information on the invoice as required by PMK-6 using transaction codes “01” (for the portion of VAT that is borne by the buyer) and “07” (for the portion of VAT that is borne by the government). The VAT invoice must be reported in the respective VAT return and the returns will serve as the facility realization reports provided that they are submitted to the tax office by 31 October 2022 (including amendment reports).

VAT that has been borne by the government must be repaid if the tax authorities discover that:

- The PKP has not registered the property with the MPWH and/or BP TAPERA by the deadline;
- The property sold or the delivery process does not meet the requirements for the facility;
- The individual does not qualify for the facility or owns more than one property that has benefitted from the incentive;
- The sale of the property does not take place between 1 January 2022 and 30 September 2022;
- Any of the requirements related to the VAT invoice or VAT return are not met;
- The property is transferred within one year after the initial sale; or
- The minutes of handover have not been registered with the MPWH.

PMK-6 stipulates that, if the property fulfills the requirements for the incentive under PMK-103 but the delivery has not been carried out, the conditions for the incentive will follow PMK-6 provided that the minutes of handover are completed by 30 September 2022. The relevant VAT invoices issued under PMK-103 must be amended and any underpaid VAT must be collected from the buyer. The VAT return must also be amended to reflect the amended VAT invoices. The deadline to submit such VAT returns is by 31 October 2022. PMK-6 provides examples of the application of VAT incentives for transactions during the transitional period.

Implementing guidelines for controlled foreign corporation rules issued

On 28 December 2021, Indonesia's Directorate General of Taxation issued Circular Letter Number SE-55/PJ/2021 (SE-55) to provide the tax authorities with detailed guidance on controlled foreign corporation (CFC) rules. SE-55 clarifies a number of remaining uncertainties regarding the implementation of the CFC regulation that was issued by the MoF in 2017, i.e., 107/PMK.03/2017 as amended by 93/PMK.03/2019 (PMK on CFC rules) (please refer to *Tax Alert August 2017* and *Tax Alert July 2019*).

SE-55 addresses uncertainties on the implementation of PMK on CFC rules.

Some of the issues clarified by SE-55 are as follows:

Timing of deemed dividends

PMK on CFC rules only covers the timing of deemed dividends in cases where the CFC is either required to submit an annual income tax return or not. It does not address the situation in some countries where taxpayers are permitted to submit an interim income tax return prior to submitting final annual income tax returns. This causes confusion among taxpayers with a CFC that submit both interim and final annual income tax returns as to which deadline the taxpayer should use to determine the timing of deemed dividend. SE-55 clarifies that where the jurisdiction of the CFC has the option to submit an interim return, the dividend is deemed to arise at the end of the fourth month after the deadline for submitting the final return.

Expenses deductible in calculating deemed income for fiscal year 2019 (FY 2019) and subsequent years

As from FY 2019, only passive income is subject to CFC rules and related expenses may be deducted from income. However, the criteria for deductible expenses are not clearly defined in 93/PMK.03/2019. SE-55 confirms that the tax regulations applicable in the CFC's jurisdiction must be followed to determine the expenses that are deductible against the passive income.

CFC treatment of a loss of a non-listed company established in another jurisdiction

SE-55 clarifies that:

- A loss of a CFC cannot be used to offset other income from Indonesia;
- The loss of a CFC in one tax jurisdiction cannot be offset against the gain from a CFC in another tax jurisdiction; and
- Where there are directly and indirectly owned CFCs within the same tax jurisdiction, losses and gains may be offset between CFCs in that jurisdiction. If the offsetting of gain and loss between these CFCs results in a gain position, the deemed dividend will occur. However, if the offset results in a loss position, the loss will not be accounted/compensated with other income from Indonesia or gain from CFC in another tax jurisdiction.

Clarification of applicable foreign exchange rate

SE-55 clarifies the applicable foreign exchange rate and date for deemed income dividend, actual dividend received, and foreign tax credit, as follows:

<table>
<tr><th>Subject matter</th><th>Applicable foreign exchange rate</th><th>Date of exchange</th></tr>
<tr><td>Deemed dividend</td><td rowspan="2">• Bank Indonesia (BI) middle rate; or
• Daily spot exchange rate in international market if the currency is not listed in the BI middle rate</td><td>The date the dividend is deemed to arise</td></tr>
<tr><td>Actual dividend received</td><td>The date the dividend is received</td></tr>
<tr><td>Income tax paid or withheld in the other jurisdiction (foreign tax credit)</td><td>Exchange rate determined by the MoF

Taxpayers maintaining books of account in USD must convert foreign tax credits in currencies other than USD into USD using BI middle rate or daily spot exchange rate in international market (if the currency is not listed in the BI middle rate)</td><td>The date the income tax is due, paid, or withheld in the other jurisdiction</td></tr>
</table>

Gains or losses arising from the use of different foreign exchange rates when calculating the deemed dividend may be offset against the actual dividend received, as follows:

- Where the deemed dividend calculated is greater than the actual dividend received, the excess deemed dividend may be carried forward for five years as from the year in which the dividend is received; and
- Where the deemed dividend calculated is less than the actual dividend received, the excess of the actual dividend received is subject to income tax and reported in the annual income tax return for the year in which the dividend is received.

Application of CFC rules to trusts

Where the CFC is owned through a trust or similar entity, the trust or similar entity is “looked through” irrespective of the type of trust. The settlor is regarded as the party that owns the CFC, and thus reports the deemed dividend and claims the foreign tax credit. However, if the settlor dies or cannot be identified, the beneficiary is regarded as the party that owns the CFC.

Clarification of how to declare the deemed dividend in the annual tax return

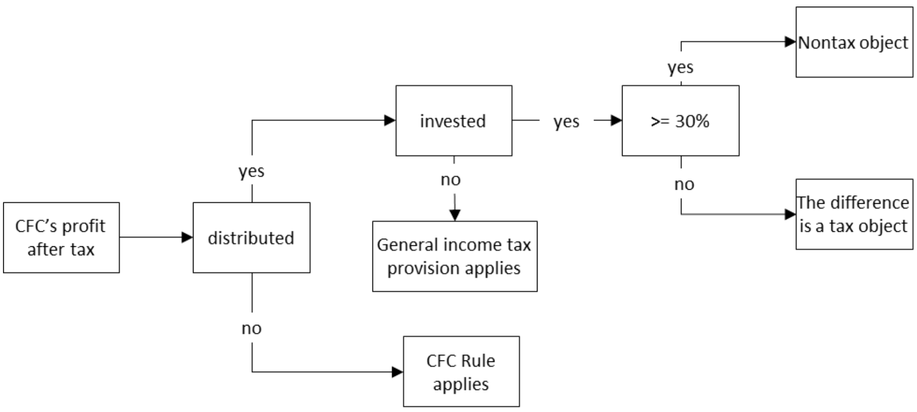
PMK on CFC rules provides the form for declaring creditable foreign income tax related to a CFC but does not provide clear guidance on how to report the deemed dividend in annual income tax returns. This can cause confusion when the taxpayer has a deemed dividend but no actual dividends have yet been distributed and there is no foreign tax credit to be utilized. SE-55 provides guidance on how to declare the deemed dividend and the actual dividend received, as well as dividend income tax paid or withheld in the CFC’s tax jurisdiction.

Impact of the Omnibus Law on CFCs

Law Number 11 of 2 November 2020, the Omnibus Law on Job Creation (the "Omnibus Law"), provides that dividend and profit after tax from foreign subsidiary of which the shares are not publicly listed may be subject to income tax unless a specified portion of the dividend is actually distributed and invested in certain eligible instruments (please refer to *Tax Info March 2021*). This provision has caused confusion among taxpayers with CFCs. SE-55 clarifies that the CFC rules apply where:

- The CFC does not distribute dividend to the Indonesian taxpayer; or
- The dividend distributed is not invested in Indonesia in eligible instruments as required under the Omnibus Law.

SE-55 provides the diagram below for ease of reference:



Indonesian taxpayers that are subject to CFC rules should refer to SE-55 for guidance in implementing those rules and assess whether they should revise their previous annual income tax returns to align with SE-55.

Customs Focus

Changes in export duty tariffs on exported palm kernel shells

In order to support economic potential and market opportunities in the export of palm oil-based industrial commodities aimed to enhance state foreign currencies, the MoF has issued Regulation Number 1/PMK.010/2022 (PMK-1) to amend Regulation Number 13/PMK.010 /2017 (PMK-13) concerning Determination of Exported Goods Subject to Export Duties and Export Duty Tariffs.

Under both PMK-1 and PMK-13, the MoF has determined six types of export commodities that are subject to export duties, including:

a. Leather and wood;
b. Cocoa beans;
c. Palm oil, crude palm pills, and their derivative products;
d. Products from metal mineral processing; and
e. Metal mineral products with certain criteria.

PMK-1 further changes the export duty tariff of palm kernel shell that is in the form of flakes and powder with a particle size of ≥ 50 mesh, which belongs to one of the export commodities groups as listed in point c above (palm oil, crude palm pills, and their derivative products).

The following is a detailed table of changes to export duty tariffs on these exported goods, grouped based on the reference price range (Columns 1 – 12) that has been determined based on PMK-1:

Description	**Palm kernel shell in the form of flakes and powder with a particle size of ≥ 50 mesh**	
HS Code	**Ex 1404.90.91**	
	Previous regulation (PMK-13) (USD/metric ton)	**New regulation (PMK-1) (USD/metric ton)**
Column 1 (≤ 750 USD/ton)	7	3
Column 2 (> 750 to ≤ 800 USD/ton)	10	3
Column 3 (> 800 to ≤ 850 USD/ton)	11	4
Column 4 (> 850 to ≤ 900 USD/ton)	13	5
Column 5 (> 900 to ≤ 950 USD/ton)	16	6
Column 6 (> 950 to ≤ 1,000 USD/ton)	18	7
Column 7 (> 1,000 too ≤ 1,050 USD/ton)	20	8
Column 8 (> 1,050 to ≤ 1,100 USD/ton)	22	9
Column 9 (> 1,100 to ≤ 1,150 USD/ton)	24	10
Column 10 (> 1,150 to ≤ 1,200 USD/ton)	26	11
Column 11 (> 1,200 > to ≤ 1,250 USD/ton)	28	12
Column 12 (> 1,250 USD/ton)	30	13

PMK-1 has taken into effect as from 11 January 2022.

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