



Indonesia Tax Info March 2021

Implementing Regulations for Omnibus Law have been issued

On 2 November 2020, the Indonesian President signed Law Number 11 of 2020 regarding the Omnibus Law on Job Creation (Omnibus Law) (please refer to [Tax Info October 2020](#) and [Tax Info November 2020](#)). The Omnibus Law amends several articles in the existing tax laws regulating income tax, VAT and general tax provisions and procedures. As the consequence, implementing regulations need to be issued to govern the new provisions and to synchronize the existing implementing regulations with the Omnibus Law. Therefore, the government issued Regulation Number 9 on 2 February 2021 (PP-9), followed by Regulation Number 18/PMK.03/2021 issued by the Minister of Finance (MoF) on 17 February 2021 (PMK-18). PP-9 and PMK-18, which came into effect immediately upon issuance, act as the implementing regulations for the tax clusters of the Omnibus Law.

In this issue:

1. [Implementing Regulations for Omnibus Law have been issued](#)

Customs Focus:

2. [Anti-dumping import duty upon importation of Biaxially Oriented Polyethylene Terephthalate \(BOPET\) from India, China, and Thailand](#)

PP-9 mainly amends the following existing government regulations that implement current tax laws to align with changes made by the Omnibus Law:

- Regulation Number 94 of 2010 as amended by Regulation Number 45 of 2019 implementing Income Tax Law (PP-94);
- Regulation Number 16 of 2009 as lastly amended by Regulation Number 55 of 2019 implementing Income Tax Law related to income tax on interest income from bonds (PP-16);
- Regulation Number 1 of 2012 implementing VAT Law (PP-1); and
- Regulation Number 74 of 2011 implementing General Tax Provisions and Procedures Law (PP-74).

PMK-18 was issued in response to the pending implementing regulation that are mandated in the Omnibus Law and PP-9. PMK-18 also updates several articles in previous MoF regulations to align with the Omnibus Law.

PP-9 and PMK-18 were issued in response to the pending implementing regulation that were mandated in the Omnibus Law.

A. Income Tax

1. Indonesian citizen staying outside Indonesia can be treated as a foreign tax resident

Previously, the regulation stated that an Indonesian citizen shall continue to be a domestic tax resident (*subjek pajak dalam negeri* (SPDN)) until the citizen passes away/leaves Indonesia permanently. However, this is changed by the Omnibus Law which states that an Indonesian citizen staying outside Indonesia for more than 183 days can now be treated as a foreign tax resident (*subjek pajak luar negeri* (SPLN)) if the citizen meets certain requirements.

These requirements are:

- Permanent home/place of main activities/habitual abode test.
- This test will be carried out in stages by the tax office with one of the main requirements is to have a permanent home abroad;
- The individual has to be able to prove the tax resident status overseas, by providing a certificate of domicile or other similar documents issued by the overseas tax authority;
- All Indonesian tax obligations during the citizen's time as a domestic taxpayer have been fulfilled; and
- Clarification letter of Indonesian citizen meeting requirements as an SPLN (*Surat Keterangan WNI Memenuhi Persyaratan Menjadi Subjek Pajak Luar Negeri*) issued by the Directorate General of Taxation (DGT) must be obtained. The clarification letter can be requested to the DGT through an electronic channel.

An Indonesian citizen who can prove the intention of becoming an SPLN when leaving Indonesia (such as by providing a long-term working contract), can apply to the tax office for a noneffective taxpayer status. The noneffective taxpayer who has lived overseas for more than 183 days still have to fulfil the SPLN requirements by requesting the clarification letter of Indonesian citizen meeting requirements as an SPLN mentioned above. Noncompliance with the fulfilment of SPLN requirements or failure in obtaining the clarification letter above may result in the noneffective taxpayer status being revoked and the individual will be subject to tax in Indonesia as a domestic taxpayer.

An Indonesian citizen who has become an SPLN and noneffective taxpayer is treated as a non-Indonesian taxpayer. As such, any Indonesian-sourced income earned or received by the citizen concerned will be subject to the withholding of Article 26 income tax.

2. Territorial basis taxation can be applied to certain foreign citizen who has become a domestic taxpayer (*subjek pajak dalam negeri* (SPDN))

In the past, a foreign citizen staying in Indonesia for more than 183 days within 12 months is treated as an SPDN and taxed on worldwide income.

Under the Omnibus law, a foreign citizen staying in Indonesia for more than 183 days within 12 months is treated as an SPDN and taxed on Indonesian-sourced income only (territorial basis) if the individual has certain skills. Indonesian-sourced income includes income earned in Indonesia but paid overseas. The territorial basis taxation will not apply if the foreigner benefits from a tax treaty.

A foreign citizen with certain skills can either be a foreign employee with certain job position or a foreign scientist as allowed by the relevant ministries. PMK-18 elaborates certain skills as follows:

- The individual must be a foreign citizen;
- The individual has expertise in science and technology and/or math, which can be proven through:
 - certification issued by an authorized institution;
 - educational certificate; and/or
 - working experience of minimum five years, in the relevant field of expertise; and
- The individual has an obligation to transfer knowledge.

PMK-18 provides a list of fields of expertise that are eligible for this tax treatment.

Territorial basis taxation is valid for the first four years after the foreign citizen becomes an SPDN for the first time, and applicable on income received or earned from 2 November 2020 onwards.

This tax treatment is available by applying to the DGT in which the tax office must respond (either in the form of approval or rejection) within 10 working days since the complete application is submitted. A foreign citizen who has already become an SPDN before 17 February 2021 can enjoy this treatment as long as the four-year period since the foreign citizen becomes an SPDN has not passed and the foreigner applies for this treatment to the DGT. If the application is approved, the treatment shall be applicable to income received or earned from Indonesia from 2 November 2020 onwards and the treatment shall be valid until the four-year period since the foreign citizen becomes an SPDN for the first time ends.

A foreign citizen staying in Indonesia for more than 183 days within 12 months can be treated as an SPDN and taxed on Indonesian-sourced income only.

3. Tax exemption on dividend income and certain other incomes

To be eligible for tax exemption, the dividend, both from domestic and overseas sources, must be distributed through general shareholders meeting or interim dividend in accordance to the prevailing regulations.

Dividend income from domestic sources

Dividend income earned or received from domestic listed and non-listed companies is exempted from tax if the recipient is:

- A domestic individual recipient, with certain restriction; or
- A domestic corporate recipient, without any restriction.

Restriction on tax exemption for domestic individual taxpayers

Dividend income from a domestic source earned or received by an Indonesian individual is subject to 10% final income tax. The company distributing the dividend has the obligation to withhold the tax.

The Omnibus Law provides income tax exemption for this income. Therefore, domestic companies no longer withhold the 10% final income tax. However, there is a restriction for the tax exemption, in which the exemption only applies for the portion of dividend that is reinvested into Indonesia. The difference between the amount of dividend received and the amount of reinvestment is still subject to 10% final income tax and the individual recipient has to self-assess the tax.

Dividend income that is tax exempted must be reported as nontaxable income in the annual income tax return. Tax withheld on dividend that has been distributed to domestic individual taxpayers since 2 November 2020 which should have been eligible for tax exemption can be refunded.

Government Regulation Number 19 of 2009 regarding income tax on dividend for individual taxpayers and MoF regulation Number 111/PMK.03/2010 regarding procedures to withhold, settle, and report income tax on dividend received or earned by domestic individual taxpayers still apply as long as they do not contradict PP-9 and PMK-18.

Tax exemption for domestic corporate taxpayers

In the past, dividend income was subject to corporate income tax (CIT), or was exempted from tax as long as certain requirements were met (the dividend was paid from retained earnings and there was a minimum 25% share participation in the entity paying the dividend).

The Omnibus Law now rules that dividend income received by a domestic corporate taxpayer is exempted without any restriction. As such, dividend income will be disclosed in the CIT return as nontaxable object. Tax withheld on dividend that has been distributed to domestic corporate taxpayers since 2 November 2020 that should have been eligible for the tax exemption can be refunded.

Dividend income earned or received by domestic individual recipient is exempted from tax with certain restriction.

Dividend income earned or received by domestic corporate recipient is exempted from tax without any restriction.

Dividend income from overseas sources, profit after tax (PAT) of a permanent establishment (PE), and income from foreign active business without a PE

In the past, dividend income from offshore, PAT of a PE, and income from foreign active business without a PE, were subject to CIT and there was no tax exemption available.

Under the Omnibus Law, the abovementioned incomes are still subject to income tax. However, tax exemption is available when those income are reinvested into Indonesia for a certain period of time. Unlike for dividend from domestic sources, tax exemption treatment for those incomes from overseas does not differentiate whether the income recipient is an individual taxpayer or a corporate taxpayer. Rather, it differentiates the minimum reinvestment required to be eligible for the tax exemption.

Dividend income from offshore, PAT of a PE, and income from foreign active business without a PE can be tax exempted.

Requirements for reinvestment of dividend from offshore listed companies

The tax exemption treatments for dividend from offshore listed companies are as follows:

- The amount of dividend reinvested into Indonesia for a certain period of time is exempted from income tax (reported as a nontaxable object in the annual income tax return); and
- The portion of dividend received that is not reinvested into Indonesia for a certain period of time is subject to tax.

Requirements for reinvestment of dividend from offshore non-listed companies and PE's PAT

The tax exemption treatments for dividend from an offshore non-listed company or a PE's PAT is as follows:

- There is a threshold for minimum amount of dividend or PAT to be reinvested into Indonesia, i.e., 30% of the PAT proportionated in accordance with the shareholding's percentage (threshold);
- The amount of dividend/PAT reinvested into Indonesia for a certain period of time is tax exempted (reported as a nontaxable object in the annual income tax return);
- The difference between the reinvested amount and the threshold is subject to income tax;
- The rest of the PAT is not subject to tax;
- The dividend is sourced from PAT from fiscal year 2020 onwards and the dividend is earned or received from 2 November 2020; and
- The dividend from an offshore non-listed company is reinvested in Indonesia before the tax office issues a deemed dividend (CFC) tax assessment letter.

Provisions stipulated in MoF Regulation Number 107/PMK.03/2017 as amended by Regulation Number 93/PMK.03/2019 regarding CFC are still applicable as long as that they do not contradict PMK-18.

Requirements for reinvestment for offshore active business without a PE

Income from foreign active business without a PE that is reinvested in Indonesia within a certain period of time can be tax exempted if the following requirements are met:

- The income is earned from a foreign active business; and
- The income is not derived from a subsidiary overseas.

The portion of income from foreign active business that is not reinvested into Indonesia for a certain period of time is subject to income tax.

Foreign tax credit

Taxes that have been paid offshore but have enjoyed tax exemption treatment for dividend or PE's PAT or income from foreign active businesses without a PE as mentioned above cannot be credited against the Indonesian CIT payable, claimed as expenses or refunded. If there is a portion of these income that cannot enjoy tax exemption treatment due to not being reinvested, the foreign tax that can be credited against the CIT has to be proportionated.

Provisions in the MoF Regulation Number 192/PMK.03/2018 still apply as long as they do not contradict with PMK-18.

Reinvestment instruments

PMK-18 provides a list of reinvestment instruments that qualify for the tax exemption treatment above, which covers investment instruments in financial market and outside of financial market.

The reinvestment must be conducted by the following deadline:

- by the end of the third month (for individual taxpayers); or
- by the end of the fourth month (for corporate taxpayers), after the fiscal year when the dividend or income is earned or received ends.

The investment must be held for a minimum of three years, starting from the fiscal year when the dividend or income is earned or received. It cannot be transferred but it can be converted to other allowed investment instruments.

A taxpayer utilizing the tax exemption treatment above (except for corporate taxpayers receiving dividend from domestic sources) must submit a reinvestment realization report annually for three years.

Reinvestment must be made in certain instruments and held for a minimum of three years.

4. Lower WHT rate for payment of interest income from bonds payable to offshore party

PP-9 clarifies that interest income from bonds paid to or earned by an offshore party is subject to the lower WHT rate of 10% (or rate based on tax treaties). This new rate is applicable to bonds issued by government and non-government agencies and includes sharia bonds.

This new rate is set to apply six months after PP-9 comes into effect (i.e., 2 August 2021).

5. Certain income earned by institutions managing Hajj Finance (*Badan Pengelola Keuangan Haji* (BPKH)) can be exempted from income tax

BPKH's income from Hajj funds (*dana setoran Biaya Penyelenggaraan Ibadah Haji* (BPIH) or BPIH *Khusus*) and income from hajj financial development are exempted from income tax if BPKH can provide a WHT exemption letter.

The tax exemption is applicable starting from 2 November 2020.

6. Surplus earned by registered social and religious bodies may be eligible for tax exemption

Surplus earned by registered social and religious bodies can be exempted from income tax if a minimum 25% of the surplus is used for developing facilities and infrastructure in Indonesia or invested as perpetual funds for at least four years since the surplus is earned.

The registered social and religious body has to attach an annual realization report on the development or investment to its annual CIT return.

Surplus that is not used for development or investment will be subject to tax after the four-year period has elapsed.

B. VAT

1. Deliveries of taxable goods on consignment arrangement are no longer subject to VAT

Previously, the delivery of taxable goods on a consignment arrangement would immediately be subject to VAT when the goods were delivered to a consignee by a consignor even though the goods had not been sold to consumers yet. If the taxable goods were not sold, the VAT would be reversed using the return (*retur*) mechanism.

PP-9 stipulates that under the consignment scheme, VAT is due as follows:

- For consignors, the VAT is due when the delivery is recognized as receivables or sales, or invoice is issued; and
- For consignees, the VAT is due when the taxable goods are handed directly to the buyer/goods recipient/courier or when the consignee recognizes the delivery as receivables or sales, or when the invoice is issued.

Deliveries of taxable goods on consignment arrangement are no longer subject to VAT.

2. Updates on provisions related to VAT during pre-production period

Prior to Omnibus Law only input VAT on purchase and imports of capital goods are creditable. These creditable input VAT during pre-production is limited to three years, which might be extended for another two years under certain conditions. The VAT entrepreneur (*Pengusaha Kena Pajak* (PKP)) may apply for VAT refund in every fiscal period.

Input VAT that can be credited during pre-production period is expanded.

Under the Omnibus Law, the creditable input VAT is expanded to include all procurements of taxable goods and/or taxable services, import of taxable goods, and utilization within the Customs Area of taxable intangible goods and/or taxable services from outside the Customs Area, provided that the requirements under the VAT Law are met.

PMK-18 regulates that in general, the creditable input VAT during pre-production period is limited to three years. However, this time period is extended up to five years for manufacturer of taxable goods, or up to six years for certain national strategic projects. The PKP may request a VAT refund at the end of the fiscal year.

The input VAT becomes non-creditable, if within the time limit above:

- The PKP has not made any delivery; or
- The PKP has not made any delivery and its business is dissolved or its PKP status is revoked.

PMK-18 further elaborates the criteria of not yet making delivery as follows:

- For PKP engages in trading business sector, it has not delivered or export taxable goods;
- For PKP engages in service industry, it has not delivered or export taxable services; or
- For PKP that manufactures taxable goods, it has not delivered or export self-produced taxable goods.

The criteria of not yet making delivery above includes PKP that only carries out the following activities during pre-production period:

- Delivery of taxable goods and/or taxable services for own use or free gifts;
- Delivery from head office to branch office, or vice versa, or between branch offices;
- Delivery of taxable goods of which the initial intention is not for sale; and/or
- Delivery of taxable goods and/or taxable services which is not directly related to the PKP's main business activities.

If PKP changes its business activity during pre-production period, then the following shall apply:

- The input VAT is creditable if it is directly related to the new business activity; or
- The input VAT is not creditable if it is not directly related to the new business activity.

If the pre-production period has passed and the PKP has not reached production stage, then the following shall apply:

- Input VAT that has been refunded or credited against output VAT (arising from activities considered as having yet to deliver) has to be repaid; and
- Input VAT that has not been refunded is forfeited.

The input VAT repayment is due:

- When the PKP's pre-production deadline ends;
- On the date of business closure or when the PKP status is revoked; or
- At the fiscal period when the PKP changes its business activities.

The input VAT repayment that is due has to be settled by the end of the following month. The VAT repayment that is settled after the repayment deadline or collected through tax assessment letter will be subject to an interest penalty.

The MoF Regulation No. 31/PMK.03/2014 concerning procedures to repay input VAT that has been refunded due to failure to reach production is revoked.

3. Input VAT received before the entrepreneur is registered as a PKP can be credited under certain mechanisms

In the past, input VAT on procurement of taxable goods and/or taxable services before the entrepreneur was registered as PKP was not creditable.

However, Omnibus Law allows such entrepreneur that is deemed to be PKP to credit 80% of the output VAT that is supposed to be collected (80% VAT deeming method), and it will be subject to penalty accordingly.

PMK-18 provides a detailed guidance on the procedures to implement, report, and settle the output VAT that is supposed to be collected after taking into account the 80% of the deemed input VAT.

Entrepreneur that is deemed to be PKP is allowed to credit 80% of the output VAT that is supposed to be collected.

4. Input VAT that has not been reported in the VAT return or notified/discovered during a tax audit, and input VAT that is collected through a tax assessment are creditable

Previously, such input VAT was not creditable.

However, under the Omnibus Law, input VAT found during a tax audit process before the tax audit findings are informed to the taxpayer can now be credited.

Further, input VAT charged through an assessment letter is creditable under certain conditions:

- The assessment letter is issued solely to charge input VAT;
- The PKP agrees to all audit results;
- The amount of VAT, plus its penalty, has been settled;
- The PKP does not proceed to further dispute process; and
- If it is in accordance with the prevailing tax regulations.

5. Grace period for adjusting to the information required to be disclosed in a VAT invoice in place of a Tax Identification Number (*Nomor Pokok Wajib Pajak (NPWP)*)

Under the Omnibus Law, if the purchaser does not have an NPWP then the following information must be provided:

- National Identity Number (*Nomor Induk Kependudukan (NIK)*), for a national individual purchaser;
- Passport number, for an individual of foreign nationality; or
- Name and address, for foreign corporations.

PP-9 provides a grace period of 30 days for non-retail PKP to adjust to this new requirement. As such, VAT invoices issued within 30 days after 2 February 2021 that do not meet the requirements on the information stated above are not subject to administrative sanctions.

6. The delivery criteria for retail PKP is updated

Previously, a retail PKP who delivers taxable goods has to fulfill the following delivery criteria:

- Through a point of retail or by visiting directly from one end-consumer's place to another end-consumer's place;
- Through a direct retail sale to the end-consumer, without prior written offer, written order, contract, or tender; and
- In general, the delivery of taxable goods or sales purchase transaction is done in cash, and the seller or buyer directly delivers or picks up the purchased taxable goods.

PP-9 and PMK-18 redefine the characteristics of a retail PKP.

In addition, a retail PKP who delivers taxable services previously had to fulfill the following delivery criteria:

- Through a delivery of services directly to end-consumer or by visiting directly from one end-consumer's place to another end-consumer's place;
- Through a direct delivery to end-consumer, without prior written offer, written order, contract, or tender; and
- In general, the payment is done in cash.

Both PP-9 and PMK-18 redefine the characteristics of retail PKP as a PKP that delivers taxable goods and/or taxable services to a buyer having end-consumer characteristics, including e-commerce transactions. The end-consumer characteristics are as follows:

- The buyer consumes or utilizes the purchased taxable goods and/or taxable services directly; and
- The buyer does not utilize the taxable goods and/or taxable services for business activities.

A retail PKP can prepare VAT invoice without buyer's identity and PKP's signature. This includes delivery of taxable goods and/or services in which the VAT is not collected, or the VAT is exempted.

A regular PKP can issue VAT invoice without the buyer's identity and PKP's signature for the following reasons:

- Personal use of taxable goods and/or taxable services that is not related to further production stage nor directly related to PKP's business activity; and
- Free gifts to end-consumers.

However, the following deliveries have to be issued with regular VAT invoice even if the buyer has end-consumer characteristics:

- Land transportation in the form of vehicles;
- Certain water transportation means;
- Certain air transportation means;
- Land and/or building; and
- Weapons.

The following rentals have to be issued with regular VAT invoice even if the renter has end-consumer characteristics:

- Land transportation vehicles;
- Certain water transportation means;
- Certain air transportation means; and
- Land and/or building.

Procedures for collecting VAT through a third party and assigning a third-party VAT collector for retail PKP will be regulated further by the MoF.

7. In-kind capital contribution (*inbreng*) may be exempted from VAT

Previously, *inbreng* was subject to VAT.

Under Omnibus Law, *inbreng* of taxable goods are VAT exempt if both transferor and transferee are PKPs. PP-9 further elaborates that for *inbreng* that does not qualify for VAT exemption, the VAT is due when the *inbreng* is agreed in transfer agreement or when the deed for *inbreng* is signed by the notary.

Inbreng of taxable goods are VAT exempt if both transferor and transferee are PKPs.

8. Transitional provisions

Some transitional provisions related to VAT are as follows:

- The time period for a PKP that has not made any delivery but has already credited its input VAT on capital goods obtained prior to 2 November 2020 is to be determined following PMK-18.
- A PKP that has not made any delivery but has amended its VAT return for the fiscal period before November 2020, in which the amended return results in VAT overpayment position, the VAT refund procedure is to follow PMK-18.
- A PKP can request for a reduction in the amount of tax underpayment in the tax assessment letter issued from 2 November 2020 up to 17 February 2021 related to entrepreneur that has not been registered as a PKP, in which:
 - The tax is not calculated using the 80% VAT deeming method; and
 - The PKP disagrees with the audit findings.
- Input VAT collected through a tax assessment issued before 2 November 2020 can be credited provided that it meets certain requirements, and the VAT and its penalty have been settled since 2 November 2020.
- MoF Regulation No. 151/PMK.03/2013 related to VAT invoice is revoked.

C. General tax provisions and procedures

1. Individual taxpayer meeting certain criteria can adopt recording (*pencatatan*)

PP-9 added a provision whereby an individual taxpayer meeting certain criteria is allowed to conduct recording. These criteria may include the amount of capital, revenue and the year of business establishment.

PP-9 stresses that for taxpayer who has to maintain bookkeeping (*pembukuan*), the bookkeeping has to be conducted in accordance to Indonesian general accounting standards (*Standar Akuntansi Keuangan (SAK)*), unless otherwise specified by the tax regulations.

Bookkeeping has to be conducted in accordance to SAK.

The detail criteria for individual taxpayer allowed to conduct recording, the procedures to maintain recording as well as bookkeeping will be subject to further MoF regulation.

2. The use of electronic system to meet the rights and obligations of taxpayers and to issue tax assessment letters and tax decisions letters by tax authority

PP-9 confirms that that fulfilment of tax rights and obligations electronically is allowed, including the use of electronic signatures. This will be carried out through cooperation with parties using a system that is integrated to the DGT's system. This matter will be regulated further by the MoF.

The DGT can issue and sign tax assessment letters, tax decision letters, and tax collection letters electronically. These letters will have the same legal standing as the manual letters; hence, the DGT does not need to issue manual version of the letters that have been issued electronically. Further details will be regulated by MoF.

3. PMK-18 updates or replaces some of the existing MoF regulations to align with the changes made in the Omnibus Law.

MoF Regulation Number 243/PMK.03/2014 as amended by Regulation Number 9/PMK.03/2018, regarding tax returns – amended

PMK-18 updates the tax penalty rate being referred to in the regulation to align with the Omnibus Law.

MoF Regulation Number 242/PMK.03/2014 (PMK-242) regarding tax settlement – amended

Some of the major changes are as follows:

- PMK-18 provides a clarification on how to offset the tax underpayment with the tax overpayment documents that are in USD.
- Provisions related to the request for tax deferment or tax installment must be done, at the latest, before a distress warrant is informed to the tax bearer or when the annual income tax return is submitted.
- The maximum period of tax deferment or tax installment is changed from 12 months to 24 months or until the deadline to submit annual income tax return for the following fiscal year.
- Tax penalty has been updated to align with the Omnibus Law.
- The request for tax deferment or tax installment, of which the process has not been finalized by the time of the issuance of PMK-18 will be processed following PMK-242.
- Forms related to tax deferment or tax installment were updated by PMK-18.

MoF Regulation Number 17/PMK.03/2013 as amended by Regulation Number 184/PMK.03/2015 (PMK-17) regarding tax audit procedures – amended

Some of the changes made by PMK-18 to PMK-17 are as follows:

- The DGT can audit and issue an underpaid tax assessment letter (*Surat Ketetapan Pajak Kurang Bayar* (SKPKB)) for a PKP that has not reached the production stage whilst the pre-production deadline has elapsed, but the PKP concerned has already requested for VAT refund or has credited the pre-production VAT.
- PMK-18 updates circumstances in which a tax audit can proceed to audit on preliminary evidence. In the event a tax audit is suspended due to proceeding to audit on preliminary evidence, the audit will stop after the tax underpayment and penalty have been settled, unless the audit or investigation reveals that there is still tax that is overpaid.
- The penalties mentioned in the regulation are updated.

MoF Regulation Number 145/PMK.03/2012 as amended by Regulation Number 183/PMK.03/2015 regarding tax assessment letter and tax collection letter – amended

Some of the changes are as follows:

- Previously, the DGT could issue either an SKPKB or an additional underpaid tax assessment letter (*Surat Ketetapan Pajak Kurang Bayar Tambahan* (SKPKBT)) even after the statute of limitation of five-year period has elapsed, if the DGT received the decision letter from the court that the taxpayer is sentenced for a tax crime. This provision is removed in PMK-18.
- An SKPKB can be issued if tax audit finds that:
 - There is a tax underpayment;
 - The tax return is not submitted within the deadline specified in the tax warning letter and the deadline to submit the return has elapsed;
 - VAT and luxury-goods Sales Tax (LST) should neither have been compensated nor subject to VAT with the rate of 0%;
 - The taxpayer does not maintain proper bookkeeping thus the amount of tax payable cannot be determined;
 - The NPWP and/or PKP status that are determined *ex-officio*; or
 - The PKP has not reached the production stage whilst the pre-production deadline has elapsed, but it has already requested for VAT refund or credited the pre-production VAT.
- SKPKBT can only be issued based on tax re-audit (*pemeriksaan ulang*).
- PMK-18 elaborates the statute of limitation of tax collections under various circumstances.
- PMK-18 provides the following transitional provisions:
 - Regarding input VAT that has been refunded or credited during the pre-production period, but fails to meet the production deadline, and the VAT has not been repaid by 2 November 2020, the tax office can collect the repayment of the input VAT through the issuance of an SKPKB.
 - Regarding interest compensation that should not have been granted and have not yet repaid by 2 November 2020, the tax office can collect the repayment through the issuance of a tax collection letter.

In the event a tax audit is suspended due to proceeding to audit on preliminary evidence, the audit will stop after the tax underpayment and penalty have been settled unless the audit or investigation reveals that there is still tax that is overpaid.

MoF Regulation Number 239/PMK.03/2014 (PMK-239) regarding audit on preliminary evidence – amended

Some of the changes made to PMK-239 are as follows:

- Audit on preliminary evidence after the issuance of a tax assessment letter can be carried out only on new data that have not been disclosed in the tax assessment letter.
- The timeline for an extension for an audit on preliminary evidence is shortened to 12 months (previously 24 months).
- PMK-18 clarifies that settlement of tax underpayment and penalty are considered as recovery of state losses.
- The statute of limitation of five-year period is overridden as long as the statute of limitation for tax crime has not passed.
- Extension for an audit on preliminary evidence that has been extended before PMK-18 is issued will continue to be processed in accordance with the provisions under PMK-239.

Audit on preliminary evidence after the issuance of a tax assessment letter can be carried out only on new data that have not been disclosed in the tax assessment letter.

MoF Regulation Number 55/PMK.03/2016 (PMK-55) regarding the termination of tax investigation – amended

Changes made to PMK-55 are:

- Penalty stated in the regulation has been updated to align with Omnibus Law.
- Request for halting investigation on tax crime that has not been finalized when PMK-18 was issued, would be processed using PMK-55.

MoF Regulation Number 226/PMK.03/2013 as amended by Regulation Number 65/PMK.03/2018 (PMK-226) regarding interest compensation – replaced

Some of the changes made to PMK-226 are as follows:

- It covers the granting of interest compensation due to:
 - The lateness in granting interest compensation for tax overpayment because of a tax refund;
 - The late issuance of SKPLB; and
 - Tax overpayment because of the approval for:
 - Objection or appeal or judicial review;
 - Revision or reduction or cancellation of SKP; and
 - Reduction or cancellation of STP.
- Taxpayer who wishes to request for interest compensation should refer to PMK-18 for the procedures.
- For the process of request or granting an interest compensation that has not been finished by 17 February 2021, while the tax product was issued before 2 November 2020, it will follow the procedures in PMK-226. Meanwhile, if the tax product is issued after 1 November 2020, the procedures will follow the provisions stipulated in PMK-18. The process of granting of interest compensation must be finished within one month for request submitted and received in complete by the tax office starting from 17 February 2021.

4. Provisions related to penalties and interest compensation are updated to align with changes made in Omnibus Law

Provisions related to penalties under different circumstances in PP-74 and PMK-18 have been updated in order to align with the changes made in the Omnibus Law. The same also applies to interest compensation.

Some additional transitional provisions under tax administrations are as follows:

- For tax assessment letters and tax collection letters issued from 2 November 2020 onwards and voluntary disclosure on incorrect tax return submitted from 2 November 2020 onwards, of which the calculation of the administrative sanction started before 2 November 2020, the interest penalty will be calculated using the MoF interest rate for the period of November 2020.
- Voluntary disclosure for which its relevant tax investigation has not been passed to public prosecutor and the request for terminating tax investigation, submitted from 2 November 2020 will be subject to administrative sanction of 100% and 300%, respectively.
- A PKP that should be subject to tax collection letters issued from 2 November 2020 is subject to administrative sanction of 1% of VAT base.
- For interest compensation arising from an assessment letter or a decision letter issued starting from 2 November 2020 onwards, of which the calculation of interest compensation started before 2 November 2020, the interest compensation will be calculated MoF interest rate for the period of November 2020.

Provisions related to penalties under different circumstances in PP-74 and PMK-18 have been updated in order to align with the changes made in the Omnibus Law.

Customs Focus

Anti-dumping import duty upon importation of Biaxially Oriented Polyethylene Terephthalate (BOPET) from India, China, and Thailand

In the effort to prevent dumping consequences that may disrupt the domestic industry, MoF has issued Regulation Number 11 Year 2021 (PMK-11) concerning Anti-Dumping Import Duty (*Bea Masuk Anti Dumping* (BMAD)) upon Importation of Biaxially Oriented Polyethylene Terephthalate (BOPET) from India, China, and Thailand. PMK-11 partially revokes MoF Regulation Number 221 Year 2015 (PMK-221).

The salient points of PMK-11 are as follows:

A. Provisions for imported goods

Under PMK-221, the BOPET goods were included in the tariff heading ex. 3920.62.90. There is an additional tariff heading subject to BMAD, such as ex. 3920.62.10. Imported goods subject to BMAD remain unchanged, i.e. BOPET products in the form of plates, sheets, films, foils and strip made of plastics which are non-cellular and unreinforced, not laminated, not supported or combined with other materials.

PMK-11, which partially revokes MoF-221, was issued to prevent dumping consequences that may disrupt the domestic industry.

PMK-11 adds new tariff heading subject to BMAD, such as ex. 3920.62.10.

B. BMAD tariffs

The imposition of BMAD are additional to the general import duty of Most Favored Nation (MFN) or additional to the preferential import duty tariff based on trade agreement scheme from the respective countries involved in the agreement. The BMAD tariffs remain unchanged, as reiterated below for your reference:

| No. | Country of origin | Exporters and/or producer exporters | BMAD (%) |
|-----|-------------------|--|----------|
| 1. | India | SRF Limited | 8.5 |
| | | Vacmet India Limited | 4.0 |
| | | Jindal Poly Films Limited | 6.8 |
| | | Ester Industries Limited | 4.5 |
| | | Other exporters | 8.5 |
| 2. | China | Shaoxing Xiangyu Green Packing Co., Ltd | 2.6 |
| | | Other exporters | 10.6 |
| 3. | Thailand | SRF Industries (Thailand) Limited | 5.4 |
| | | Polyplex (Thailand) Public Company Limited | 2.2 |
| | | A.J Plast Public Company Limited | 7.1 |
| | | Other exporters | 7.1 |

C. The enactment of BMAD

According to PMK-11, the above BMAD tariffs shall apply upon the import of BOPET goods if the import clearance is conducted by applying customs declaration to the customs office. If the customs declaration is not applied, such as for consignment goods, the tariffs and customs value shall be determined by the Customs Authority. Previously, this procedure was not expressly stated under PMK-211. However, since additional tariff heading subject to BMAD for BOPET goods is now regulated under PMK-11, the rules regarding the application of BMAD tariffs have been clearly stated.

BMAD tariffs shall apply upon the import of BOPET goods if the import clearance is conducted by applying customs declaration to the customs office.

Importers engaged in the BOPET industry should closely observe the BMAD tariffs that will be imposed upon the importation of BOPET goods as an additional value for import duties and import taxes (*Pajak Dalam Rangka Impor* (PDRI)), which will be paid to the State.

PMK-11 came into force on 16 February 2021 and will be valid for 5 years.

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