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Latest Provisions on Indonesia's Tax Allowance

Sets the Standards and Beyond

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ABOUT DDTC Newsletter

Published every two weeks, DDTC Newsletter provides a summary of key tax law changes, both the current modifications and changes in taxation regulations, particularly those pertaining to domestic policies.

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The Implementation of Tax Examination Abroad for Information Exchange

The government has issued provisions concerning tax examination abroad (TEA) in the exchange of information on request (EoIR) scheme. These provisions are outlined in the Director General of Tax Regulation Number Per-02/PJ/2020 concerning the Procedures of Tax Examination Abroad for the Exchange of Information Based on International Agreements (DGT Reg. No. Per-02/PJ/2020).

TEA is the presence of a representative of the Directorate General of Taxes (DGT) for the purpose of searching and/or gathering information carried out by the tax authority of the partner jurisdiction or vice versa based on both parties' agreement This process is a follow up to the exchange of information referring to Article 13 of the Minister of Finance Regulation No. 39/PMK.03/2017 concerning the Procedures of Exchange of Information Based on International Agreements (MoF Reg. No. 39/2017).

There are at least three benefits of the TEA policy. *First,* the DGT may obtain complete information on the profile of taxpayers whose data is requested. *Second,* as the means of cooperation between tax authorities on tax issues pertaining to the same taxpayer/group to avoid the potential duplication of examinations. *Third,* an expedited process of obtaining information and data is required.

The DGT has the authority to implement TEA reciprocally with authorized officials in partner jurisdictions. The TEA includes overseas TEA and domestic TEA.

Overseas TEA is carried out based on a request from the head of the unit within the DGT to the Director of International Taxation. A request is made for a TEA to be conducted on a taxpayer, in which TEA is performed on examination activities, the examination of preliminary evidence, or investigation of tax crime in violation of said taxpayer's tax obligations.

In addition, the request may be submitted if there is significant potential tax revenue and other two requirements are met. *First,* the DGT has requested information to the authorized officials in the partner country or vice versa but the information received is inadequate thus additional information is needed. *Second,* the DGT has requested information to the tax authority of the partner country or vice versa but expedited information is required.

Further, domestic TEA is carried out based on requests from authorized officials in partner jurisdictions to the DGT's Director of International Taxation. Two conditions must be met to implement this type of TEA.

First, information requests have been made by authorized officials in the partner jurisdictions to the Director of International Taxation but the information received is inadequate thus additional information is needed. *Second,* information requests have been made by the authorized officials in partner jurisdictions to the Director of International Taxation but expedited information is required.

Entry into Force and Effective Dates of the Indonesia-Tajikistan Tax Treaty

The Director General of Taxes has issued a circular concerning the implementation of the tax treaty (*persetujuan penghindaran pajak berganda*/P3B) between Indonesia and Tajikistan. The circular refers to the Director General of Taxes Circular Number SE-03/PJ/2020 concerning the Notification of the Entry into Force of the Agreement between the Republic of Indonesia and the Republic of Tajikistan for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with Respect to Taxes on Income (DGT Circular No. 03/PJ/2020).

The regulation was issued as the government had completed the ratification procedure required by both countries. In general, Figure 1 shows the steps of a bilateral tax treaty implementation. Through this regulation, the government provides notification concerning the entry into force and effective dates of the Indonesia-Tajikistan tax treaty and the provisions contained therein. The notification is outlined in four scopes of the regulation that was promulgated on 24 January 2020.

Figure 1 – General Process for Implementing Bilateral Tax Treaty

Source: Darussalam et al (2010).

In the first scope, this regulation coherently sets out the process of signing, ratification, and notification in the context of the Indonesia-Tajikistan tax treaty ratification before the enforcement of this agreement. The Indonesia-Tajikistan tax treaty was signed by authorized officials from both countries in Jakarta on 28 October 2003. Furthermore, the Government of Tajikistan submitted a notice in the form of a diplomatic note on 8 May 2014

to the Indonesian government stating that the Tajikistan government had completed the constitutional formal requirements related to the ratification of the tax treaty.

On the part of Indonesia, the government ratified this tax treaty through Presidential Regulation Number 76 of 2019 concerning the Agreement between the Republic of Indonesia and The Republic of Tajikistan for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income (Presidential Reg. 76/2019) on 12 November 2019.

Under these conditions, the Government of Indonesia subsequently submitted a notice in the form of a diplomatic note on 13 December 2019 to the Government of Tajikistan outlining a notification that the Indonesian government had completed the formal procedures or requirements based on the Indonesian constitution for the tax treaty ratification.

The second scope of the regulation contains a notification about the entry into force and the effective dates of the Indonesia-Tajikistan tax treaty. The Indonesia-Tajikistan tax treaty has come into force as of 13 December 2019. Moreover, the treaty has been effective on taxes withheld at the source as well as other taxes on income as of 1 January 2020.

Furthermore, the third scope of DGT Circular No. 03/PJ/2020 clarifies the notification related to several provisions in the Indonesia-Tajikistan tax treaty. The circular sets forth that the source country's taxing rights on income in the form of dividends, interest, and royalties are subject to a maximum rate of 10% of the gross amount received by the beneficial owner. A maximum rate of 10% also applies to branch profit tax.

The maximum rate provision for branch profit tax, however, does not apply to production sharing contracts for oil, gas, and mining sectors agreed upon the Government of Indonesia, government agencies, state-owned oil and gas companies, or other entities with persons or body who are residents of Tajikistan.

Finally, the fourth scope of DGT Circular No. 03/PJ/2020 contains administrative provisions for the utilization of the Indonesia-Tajikistan tax treaty. The circular emphasizes that a person or entity that is a resident of Tajikistan may utilize the Indonesia-Tajikistan tax treaty in connection with the income received or obtained from Indonesia provided that they have a certificate of domicile (*surat keterangan domisili*/SKD).

Affirmation of VAT Exemptions for Marine Transport Companies that Conduct Overseas Marine Transport Activities

The government has released a provision confirming that recipients of certain port services are entitled to VAT exemption facilities in the context if those companies operate vessels for overseas marine transport activities. The regulation also emphasizes that VAT exemptions are only granted if the vessel used does not carry passengers and/or goods from one port to another within Indonesia's territory. Thus, VAT exemptions only apply to overseas transport activities. In addition, these marine transport companies must record the cost of ship services and cargo services as the form of their expenses.

The affirmation is outlined in the Director General of Tax Circular Number SE-4/PJ/2020 concerning the Affirmation of Value Added Tax Treatment for the Supply of Certain Port Services to Marine Transport Companies that Conduct Overseas Marine Transport Activities (DGT Circular No. SE-4/PJ/2020). The government issued this regulation to provide uniformity in the interpretation and treatment of VAT on the supply of certain port services to marine transport companies.

Under this regulation, in the event that a vessel is operated based on a consortium or vessel sharing agreement by several foreign marine transport companies, the recipient of port services entitled to VAT exemptions is the vessel operator stated in the shipping or port documents.

Certain port services that are subject to VAT exemptions include two types of services. *First,* ship services, namely docking services, pilotage services, tug-boat services, and mooring services. *Second,* cargo services, namely container loading and discharging services from the vessel to the container yard and/or from the container yard to the vessel.

Furthermore, container loading and discharging services include *stevedoring* and *cargodoring* services. *Stevedoring* services are services of unloading or loading of goods from the vessel to the dock/barge/truck into the vessel until the goods are loaded in the vessel hatch, either using a crane vessel or a land crane. In contrast, *cargodoring* services are services to release goods from ropes/nets (ex-tackle) at the dock to be transported from the dock to warehouses/container yard and vice versa.

Containers used repeatedly, however, are not included in the definition of goods. As such, the vessel carrying such containers is still entitled to VAT facilities. In further detail, the fulfillment of the above requirements can be detected by the Port Business Entity (*Badan Usaha Pelabuhan*) based on information from the integrated information system of the Ministry of Transportation

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and/or documents from the relevant authorities/ agencies.

Further, the regulation emphasizes that a foreign marine transport company may obtain exemptions in the event that the company's country of domicile provides the same treatment to Indonesian marine transport vessels (the principle of reciprocity). DGT Circular No. SE-4/PJ/2020 also lists 41 countries that exempt or do not impose VAT on the services of Indonesian marine transport vessels within their territories.

Foreign sea transportation companies domiciled in countries other than the 41 countries listed in the circular may obtain this facility as well provided that there is a certificate from the Competent Authority (CA). The certificate must state the company's country of domicile and affirm that the country also provides Indonesian marine transport vessels with the same VAT treatment. The Port Business Entity may subsequently use the document as evidence for all marine transport companies that are in possession of the Certificate of Domicile (COD) from the same country.

Additionally, in the event that the requirements of not transporting and the principle of reciprocity are not met, the marine transport company is to pay the VAT payable no later than one month as of the date the requirements are not fulfilled. If the stipulated time period is exceeded, the Director General of Taxes will subsequently issue the Notice of Tax Underpayment Assessment (*Surat Ketetapan Pajak Kurang Bayar*/SKPKB) plus penalties in accordance with taxation legislative provisions.

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The government emphasizes the requirements and procedures for replacing tangible fixed assets including land that are entitled to income tax facilities in the form of tax allowance. The provisions are outlined in the Minister of Finance Regulation Number 11/PMK.010/2020 concerning the Income Tax Treatment for Investment in Certain Business Fields and/or Certain Regions (MoF Reg. No. 11/2020).

This regulation is the implementing regulation of Government Regulation Number 78 of 2019 concerning the Granting of Income Tax Facilities for Investments in Certain Business Fields and/or Certain Regions (Gov. Reg. No. 78/2019). The issuance of the government regulation simultaneously revokes the Minister of Finance Regulation Number 89/PMK.01/2015 (MoF Reg. No. 89/2015).

This income tax facility is provided for domestic corporate taxpayers who invest in business activities in certain business fields and certain regions. The list of taxpayers' business fields and regions entitled to this facility is listed in Attachment of Gov. Reg. No. 78/2019. To obtain such a facility, the taxpayer must submit an application through Online Single System (OSS).

There are four forms of tax allowances provided by the government. *First,* a reduction in net income of 30% that is calculated according to the total investment value for main business activities in the form of tangible fixed assets including land for business activities for 6 years. In addition, the corporate income tax rate for these 6 years will be charged at 5% per annum.

Table 1. Accelerated Depreciation of Tangible Assets

Tangible Assets Group		Useful Life	Depreciation Rates by Method	
			Straight Line	Declining Balance
I	Non-Building			
	Group I	2 years	50%	100%
	Group II	4 years	25%	50%
	Group III	8 years	12.5%	25%
	Group IV	10 years	10%	20%
II	Building			
	Permanent	10 years	10%	-
	Non-Permanent	5 years	20%	-

Table 2. Accelerated Amortization of Intangible Assets

Intangible Assets Group	Useful Life	Amortization Rates by Method	
		Straight Line	Declining Balance
Group I	2 years	50%	100%*
Group II	4 years	25%	50%
Group III	8 years	12.5%	25%
Group IV	10 years	10%	20%

*note: charged at a time.

Second, accelerated depreciation of tangible fixed assets and accelerated amortization of intangible assets for investment with varying useful lives, depreciation rates, amortization rates according to the group of assets and their useful lives. Details on these provisions are shown in Table 1 and Table 2.

Third, the imposition of income tax on dividends paid to foreign taxpayers other than permanent establishments in Indonesia is set at the rate of 10% or a lower rate according to the tax treaty in force. *Fourth*, the provision of additional time period for compensation for losses that is longer than 5 years but not more than 10 years with the conditions specified in the Table 3.

For tangible fixed assets including land, these assets must be obtained by taxpayers in a new condition unless they are relocated, and stated in principle permit, investments,

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Table 3. Provisions on Compensation for Losses

Additional Period	Terms and Condition
Addition of 1 year	If investments are made in industrial zones and/or bonded zones.
Addition of 1 year	If investments are made in the field of new and renewable energy.
Addition of 1 year	If there is company expense for economic and/or social infrastructure in the business location for a minimum of Rp10,000,000,000.
Addition of 1 year	Using raw materials and/or components of domestic products of at least 70% in the 2nd taxable year at the latest.
Addition of 1 year	Employing at least 300 Indonesian workers for 4 consecutive years.
Addition of 2 year	Employing at least 600 Indonesian workers for 4 consecutive years.
Addition of 2 year	Paying the cost of domestic research and development to develop products or production efficiency of at least 5% of the total investment in the period of 5 years.
Addition of 2 year	Exporting at least 30% of the total value of sales for investments made outside the Bonded Zone.

registrations, or issued business permit, and are owned and used for main business activities (*Kegiatan Usaha Utama*/ KUU).

In the context of there is a replacement of asset, tax allowance will be revoked if the tangible assets are utilized not for the purposes of this facility or transferred. However, this revocation, will not be conducted if the assets are replaced with new tangible fixed assets before the expiry whichever longer than a period of 6 years from the commencement of commercial production or before the end of the useful life of the assets.

MoF Reg No. 11/2020 also sets forth that if the replacement of tangible fixed assets occurs prior to commercial production, the value of tangible fixed assets used as the basis of depreciation is the acquisition value of the new tangible fixed assets. The depreciation method is adjusted to the provisions of Law Number 36 of 2008 concerning Income Tax (Income Tax Law 2008).

If the replacement of tangible fixed assets occurs after the commencement of commercial production, the value of tangible fixed assets that serves as the basis of tax allowance in the forms of 30% net income reduction is the lower between the value of the replaced assets and the replacement assets.

If the value of the replacement tangible fixed assets is lower than the value of the assets replaced, this tax allowance may be utilized until the end of the remaining utilization period by using the value of the replacement tangible fixed assets as basis to calculate tax allowance. However, if the value of the replacement assets is higher, the tax allowance may be utilized until the end of the remaining utilization period with the value of the replaced tangible fixed assets as tax allowance basis.

In addition, the value of tangible fixed assets used as the basis of depreciation is the acquisition value of the new tangible fixed assets. The depreciation method used must be in accordance with the provisions of depreciation stipulated in the Income Tax Law 2008. Before tangible fixed assets are replaced, taxpayers are to submit a written statement to the Director General of Taxes. For the replacement tangible fixed assets, however, the accelerated depreciation facility for the tangible fixed assets as outlined in MoF Reg. No. 11/2020 cannot be provided.

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