



VOLUNTARY DISCLOSURE PROGRAM

RSM INDONESIA CLIENT ALERT – 31 JANUARY 2022

As stipulated in Law No 7 to Harmonise Tax Regulations (the HPP Law), the Voluntary Disclosure Program (VDP) is now active, running from 1 January until 30 June 2022. To support implementation of the VDP, including guidance for submission, Minister of Finance Decree No. 196/PMK.03/2021 dated 22 December 2021 (PMK-196) has been issued, with effect from 23 December 2021.

This Client Alert summarises PMK-196 and also aspects of the HPP Law with regards to the VDP.

WHO IS ELIGIBLE TO USE THE VDP?

The VDP has two sub-programs with eligibility requirements as follows:

Sub-program	Basic Eligibility Requirement	Additional Criteria
VDP 1	Any taxpayer that participated in the 2016 Tax Amnesty but did not fully disclose all assets held on 31 December 2015.	Article 2(1) of PMK-196 excludes taxpayers from participating if the Director-General of Taxation (DGT) has already found data/information regarding these assets. ¹
VDP 2	Any individual taxpayer that acquired assets during 1 January, 2016-31 December 2020 that are still owned at the end of the 2020 Tax Year but are not fully reported in the Personal Income Tax Return for the 2020 Tax Year.	A taxpayer can only participate if not already subject to an official action regarding tax. That is, a tax audit or an audit for preliminary evidence of a potential tax crime (for any of the 2016-2020 Tax Years), an investigation for tax crimes, or court proceedings or punishment regarding a tax crime. PMK-196 stipulates when these are considered to have commenced and therefore prevent the taxpayer participating in VDP 2.

Therefore, corporate entities (*badan*) are not eligible to participate in VDP 2. Individual taxpayers, however, can participate in both VDP 1 and VDP 2.

¹ PMK-196 does not state what DGT document/action would be considered to confirm the DGT has found data/information regarding the not yet disclosed assets. We assume the DGT should have taken official action, such as issuing a SP2DK, rather than only receiving data (e.g., from the AEOI exchange with another country) but not yet contacting the taxpayer.

BENEFITS FROM PARTICIPATION IN VDP

The benefits from participation in the VDP are:

- VDP 1: A waiver of the 200% penalty under the Tax Amnesty Law that would apply if the undeclared asset was detected by the DGT
- VDP 2: A waiver from tax assessments for the 2016-2020 Tax Years (unless new data is discovered by the DGT), but excluding tax already deducted or collected by the taxpayer but not yet paid (this remains due)

In addition, the data provided by participants in VDP 1 and/or VDP 2 Asset Declaration Letters cannot be used as a basis for any inspection, investigation and/or prosecution regarding tax crimes.

TAXES DUE BY VDP PARTICIPANTS

VDP participants are required to pay Final Tax before submission of their Asset Declaration Letter (*Surat Pemberitahuan Pengungkapan Harta*) to participate in the VDP.

The Final Tax is calculated using a rate/tariff that is based on the location of the assets and whether these are repatriated (if overseas) or invested in eligible assets. The tariffs are as follows:

Location of Asset					
	Overseas			Indonesia	
	Not Repatriated	Repatriated		Invested	Not Invested
		Invested	Not Invested		
VDP 1	11%	6%	8%	6%	8%
VDP 2	18%	12%	14%	12%	14%

The tariff is applied to the additional net assets disclosed by the taxpayer – that is, the relevant assets less the principal amount of any loans used to acquire that asset. The attachment to PMK-196 then states for VDP 1 the total amount of liabilities that can be deducted to determine the net assets is limited to 50% of the value of each asset for individuals and 75% for corporate taxpayers. There is no ceiling to the liability that can be deducted for VDP 2.

Details regarding each liability must be disclosed in the Asset Declaration Letter.

If an asset (or liability) is in a foreign currency, then these are converted to Rupiah using the exchange rate stipulated by the Minister of Finance as of 31 December 2015 (VDP 1) or 31 December 2020 (VDP 2).

PMK-196 also provides information regarding how to determine the value of the assets.





SUBMISSION, “ACCEPTANCE” AND AMENDMENT

The Asset Declaration Letter is submitted using the DGT’s electronic system unless force majeure prevents this. The deadline for submission is 30 June 2022.

After the taxpayer submits the Asset Declaration Letter, the DGT shall issue the Statement Letter (*Surat Keterangan* (SK)) within 1 day. This confirms the Asset Declaration Letter has been received, processed and the taxpayer has participated in the VDP.

After issuing the SK the DGT can conduct research/analysis to determine if:

- The net assets declared are consistent with the DGT’s data
- The declared assets do not meet the requirements
- The taxpayer is not eligible to participate in the VDP or did not fulfil the requirements to participate

If the DGT’s review results in a potential tax underpayment or tax overpayment the DGT will issue a Clarification Letter (*Surat Klarifikasi*) to the taxpayer requesting the taxpayer to respond and/or revise the Asset Declaration Letter and pay any unpaid tax. If there is a tax overpayment, the taxpayer may request a refund or overbooking (*pemindahbukuan*) based on the applicable regulation.

The DGT will take further action, as required, based on the taxpayer’s response, including to revise or revoke the SK.

The taxpayer can amend (add/subtract) or revoke the Asset Declaration Letter subject to the requirements under PMK-196. This is also performed using the DGT’s electronic system.

REPATRIATION REQUIREMENTS

Any offshore assets in the Asset Declaration Letter that are declared to be repatriated must be sent by bank transfer by 30 September 2022. That is, the asset must be converted to electronic funds.

Once repatriated, the asset must be retained in Indonesia for at least 5 years from the date of the SK.

The 5 years period to retain in Indonesia also applies for domestic assets that are declared in the Asset Declaration Letter.

INVESTMENT REQUIREMENTS

If the taxpayer has proposed to invest the declared assets, then the investment must occur by 30 September 2023 and it must be held for 5 years from the date of the investment.

PMK-196 provides further information regarding the reference start date if the investment occurs in stages, or if only some of the assets have been invested by 30 September 2023. There are also limited opportunities to transfer the invested asset.

Compared to the 2016 Tax Amnesty, the choices for permitted investments are limited. These are:

- Investment in Government Debt Securities (*Surat Berharga Negara (SBN)*)
- Equity investment in a Natural Resource Processing business or Renewable Energy business

Investments in SBN must be conducted through purchases in the primary market through Main Dealers. A copy of the SK should be submitted to the Main Dealer so that the Main Dealer can report the transactions to the DGT.

Investments in a Natural Resource Processing business or Renewable Energy business can be in the form of:

- Equity investment in a new business
- Equity participation in an IPO or a Rights Issue of an existing business

Natural resource processing businesses are defined as a business that processes raw materials into semi-finished or finished goods that add value to the raw materials. Renewable Energy businesses are defined as businesses that produce energy from renewable sources. The Minister of Finance will stipulate the eligible business sectors.

CONSEQUENCE IF FAIL TO REPATRIATE AND/OR INVEST, AS PROMISED

If the taxpayer does not repatriate the declared assets and/or invest these, or does not retain them/keep them invested for the required 5 years period then the taxpayer is subject to additional Final Taxes on the value of the assets not repatriated/invested/retained, as follows:

Location of Asset				
	Overseas			Indonesia
Promised Action	Repatriate	Repatriate & Invest		Invest
Actual Action	Did not repatriate	Repatriated but did not invest	Did not repatriate and did not invest	Did not invest
VDP 1	4% - if declared by taxpayer 5.5% if assessed by DGT	3% - if declared by taxpayer 4.5% if assessed by DGT	6% - if declared by taxpayer 7.5% if assessed by DGT	3% if declared by taxpayer 4.5% if assessed by DGT
VDP 2	5% - if declared by taxpayer 6.5% if assessed by DGT		7% - if declared by taxpayer 8.5% if assessed by DGT	

OTHER CONSEQUENCES OF PARTICIPATION IN VDP

Participants in VDP 2 must revoke any ongoing legal processes regarding their tax affairs for the 2016-2020 Tax Years, such as:

- Claims for income tax refunds
- Objections, appeals to the Tax Court or submissions to the Supreme Court for judicial review

These are documented in the application process – either by ticking a box on the application to authorise the DGT to cancel claims for refunds or objections, or submitting evidence of a written submission to the Tax Court/Supreme Court withdrawing that legal action.

If a participant in VDP 1 is subsequently found to have not fully declared all assets for this period (due to new information) then this will be subject to Final Tax of 25% (if an entity) or 30% if an individual plus a penalty of 200% of that additional tax.

If a participant in VDP 2 is subsequently found to have not fully declared all assets for this period (due to new information) these will be deemed as income for the 2022 Tax Year and subject to 30% Final Tax plus an administrative sanction per Article 13(2) of the KUP Law.

As was the case for the 2016 Tax Amnesty, the net assets declared shall be recognized as additional Retained Earnings on the balance sheet for taxpayers that undertake book-keeping. The declared assets and any liabilities must also be reported in the 2022 Annual Tax Return as new assets/liabilities using the date of the SK as the acquisition date.

Furthermore, any depreciable assets or intangible assets that were included in the Asset Declaration Letter cannot be depreciated or amortised for income tax purposes.

ANNUAL REPORTING

Taxpayers that participate in the VDP are required to submit an annual Investment Realisation Report through the DGT's online website for net assets that are located in Indonesia and will be invested, or that are located overseas and will be repatriated/invested. No Investment Realisation Report is required for net assets located in Indonesia that will not be invested (since these are subject to a higher tariff).

The deadline for reporting is the deadline for submission of the Annual Tax Return (Corporate Income Tax Return or Personal Income Tax Return), commencing the 2022 Tax Year.

These reports are required for 5 years.



For further information please contact:

RSM INDONESIA

Plaza ASIA Level 10
Jl. Jend. Sudirman Kav.59
Jakarta 12190
P: +62 21 5140 1340
E: inquiry@rsm.id
www.rsm.id