GUIDELINES FOR THE IMPLEMENTATION OF ARTICLE 21/26 WITHHOLDING TAX ON INCOME EARNED BY INDIVIDUALS FROM EMPLOYMENT, SERVICES OR ACTIVITIES

RSM INDONESIA CLIENT ALERT – 2 February 2024

On 29 December 2023, the Minister of Finance issued Regulation No. 168 Year 2023 concerning Guidelines for the Implementation of Withholding Tax on Income Earned by Individuals from Employment, Services or Activities ("PMK-168"). PMK-168 is the implementing regulation for Government Regulation No. 58 Year 2023 that was issued on 27 December 2023 ("GR-58").

For details of GR-58, please refer our Client Alert dated **11 January 2024**.

PMK-168 revokes the following regulations:

1. Minister of Finance ("MoF") Regulation No.250/PMK.03/2008 ("PMK-250"),
2. MoF Regulation No. 252/PMK.03/2008 ("PMK-252"),
3. MoF Regulation No. 102/PMK.010/2016 ("PMK-102"),
4. MoF Regulation No. 262/PMK.03/2010 ("PMK-262") (specific clauses only), and
5. DGT Regulation No. PER-16/PJ/2016 ("PER-16/2016").

When is PMK-168 applicable?

PMK-168 is applicable for income earned by individuals from employment, services or activities starting 1 January 2024.

Overview

PMK-168 regulates the simplified TER-based Article 21 withholding tax mechanism stipulated in GR-58. As per GR-58, for relevant individuals[1] during the year, the tax rates per Article 17(1)(a) Income Tax Law ("the Article 17 rates") are substituted with Effective Tax Rates ("TER" in Bahasa Indonesia) based on different

[1] It is important to understand that not all individuals are subject to TER-based calculations. The treatment for each type of individual is explained in this Client Alert.

income ranges[2]. These TER are then applied to the applicable income (monthly income in most cases, otherwise daily income for those paid using day rates). The result will be the tax to be withheld for that month/day.

This process continues for each month, separately, and without considering the accumulated income and/or tax withheld for the previous period. For permanent employees, in the last month of employment (for resigners) or in December (for existing employees), the income for the entire year is accumulated and applicable tax deductions are subtracted. The usual tax rates per the Article 17 rates are then applied to calculate the gross income tax payable. From this, the TER-based taxes withheld by the employer during the year are deducted to determine the final Article 21 withholding tax to be deducted by the employer for that final month (for resigners)/December (for existing employees).

PMK-168 updates or revises certain definitions, expressly includes benefits in kind as Article 21 income tax objects and then stipulates how withholding tax shall be calculated in relation to income earned by employees (including those joining/leaving employers), non-employees and other individual income recipients.

Determination of Income Recipients subject to Article 21/26 income tax

Income recipients are classified into:

1. Employees:
    a. Permanent Employees
    b. Non-Permanent Employees (including Freelancers)
2. Non – Employees
3. Others

These classifications are then used to determine how Article 21/26 income tax will be imposed.

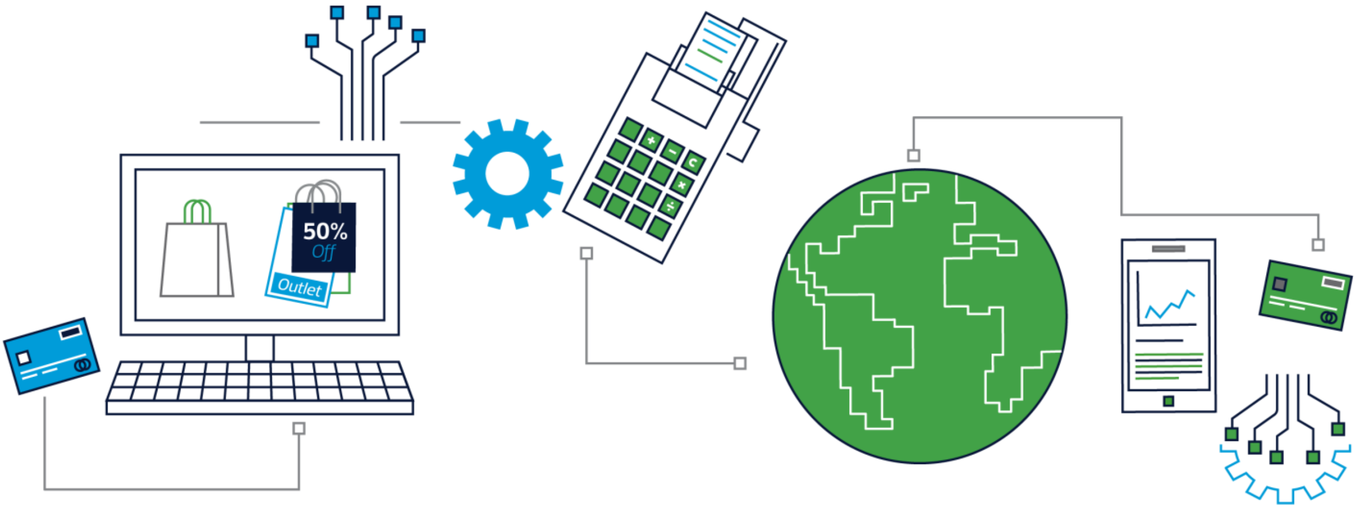
<table>
<tr><th colspan="2">EMPLOYEES
Individuals that work, either as permanent employees or non-permanent employees, based on a written or unwritten agreement, to perform a certain job (in a position/role or activity) and earn compensation based on a period, completion of work or other criteria determined by the employer, including individuals working in government institutions.</th></tr>
<tr><th>Permanent Employees</th><th>Non - Permanent Employees</th></tr>
<tr><td>Employees that receive/earn regular income;
• includes members of boards of commissioners or supervisors (that receive regular income);
• also employees working based on a contract for a specific period, provided the employee is working full-time for that work[3].</td><td>Employees, including freelancers, that only earn income if that employee works, based on number of working days, number of units completed or completion of a type of work which is requested by the employer.</td></tr>
</table>

[2] The elucidation to GR-58 explains the TER are created after considering the statutory deductions for occupation support (*biaya jabatan*), pension deduction (*biaya pensiun*), statutory employee contributions for old-age & pension (e.g. BPJS-TK), and PTKP (non-taxable income).

[3] The definition of non-permanent employee for tax purposes is different to the definition of contract employee under the Manpower Law (or what is known as a PKWT). Therefore some PKWT will be permanent employees for tax (i.e. if working fulltime), whereas other PKWT might be non-permanent employees (i.e. if working on a unit of output basis).

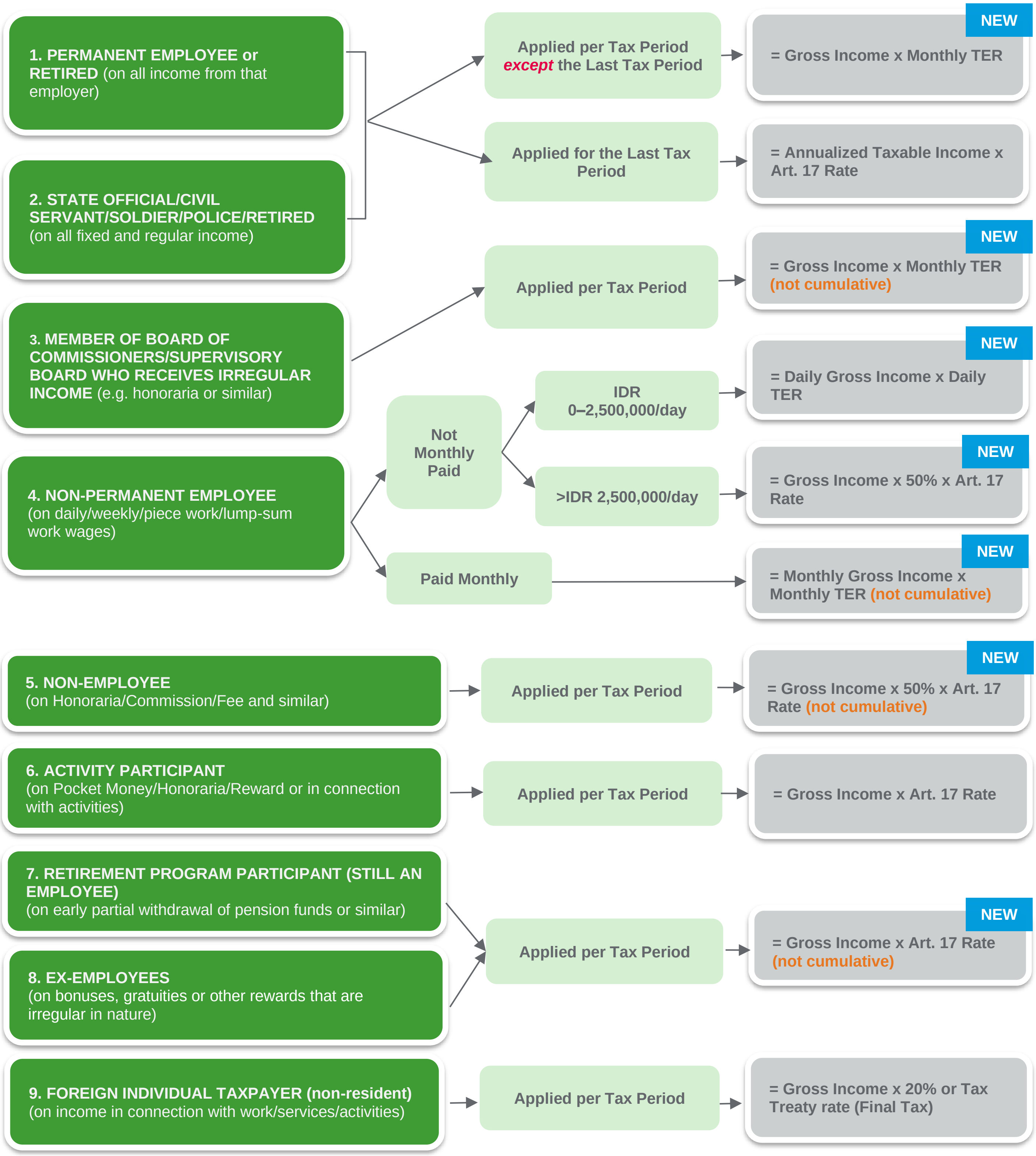
NON-EMPLOYEES
Individuals other than permanent employees/non-permanent employees that earn income in whatever name/form as compensation for freelance work or services performed based on the instruction or request of the income provider (client), as per below: a) Professional/Expert: Lawyer, Accountant, Architect, Doctor, Consultant, Notary, PPAT, Actuary and Appraiser b) Musician, MC, Singer, Comedian, Actor/Actress, Film Director & Crew, Model, Dancer, Sculptor, Painter, Content Creator (influencer, selebgram, blogger, vlogger and similar) and other artists c) Athletes d) Advisor, Teacher, Coach, Speaker, Instructor and Moderator e) Author, Researcher and Translator f) Service Provider, for any sector g) Advertising Agent h) Project Supervisor or Manager i) Broker j) Sales Person k) Insurance Agent l) Distributor of Multi-Level Marketing and similar.

OTHERS
a) Retirees b) Members of board of commissioners or supervisory board that earn irregular compensation c) Activity participants d) Members of a pension fund program who are still employees e) Ex-employees



Calculation of Article 21/26 income tax by type of income recipient

The infographic below summarises the method to be used to calculate the Article 21/26 income tax to be withheld.



Comparison between new & previous Article 21 income tax calculation methods

Below are comparisons between the Article 21 income tax calculation method under PER-16/2016 and the new method under PMK-168:

1. Permanent Employee/Retiree

Previous Permanent Employee/Retiree Calculation (PER-16/2016)	
Timing	Tariff
Applied per Tax Period, *except* the Last Tax Period	(((Monthly Gross Income– Occupation Support ("*Biaya Jabatan*") - Retirement Cost ("*Biaya Pensiun*") – Old Age/Pension Contributions) Annualized – Non-Taxable Income ("*PTKP*")) x Art. 17 Rate) / Months of Expected Employment for that year
Last Tax Period[4]	Art.21 Income Tax for the Year = (Annual Gross Income – Occupation Support – Retirement Cost – Old Age/Pension Contributions - Non-Taxable Income) x Art. 17 Rate
	Art. 21 Income Tax for Last Tax Period = Art. 21 Income Tax for Year-to-Date – Accumulated Art. 21 Income Tax withheld for previous months

NEW Permanent Employee / Retiree Calculation (PMK-168)	
Timing	Tariff
Applied per Tax Period, *except* the Last Tax Period	Monthly Gross Income x Monthly TER (as per the TER Category)
Last Tax Period[5]	Art. 21 Income Tax for the Year = (Annual Gross Income– Occupation Support – Retirement Cost– Old Age/Pension Contributions - **Zakat/Mandatory Religious donations paid through employer** – Non-Taxable Income) x Art. 17 Rate
	Art. 21 Income Tax for the Last Tax Period = Art. 21 Income Tax for Year-to-Date – Accumulated Art. 21 Income Tax withheld for previous months.

[4] The Last Tax Period will be December,unless the employee leaves during the year. In that case, the Last Tax Period is the final month of employment with that employer and the calculation of gross Article 21 income tax uses income for the year-to-resignation

[5] The Last Tax Period will be December,unless the employee leaves during the year. In that case, the Last Tax Period is the final month of employment with that employer and the calculation of gross Article 21 income tax uses income for the year-to-resignation

2. Non-Permanent Employee

Previous Non-Permanent Employee Tax Calculation (PER-16/2016)	
Gross Income	Tariff
≤ Rp 450,000 per day	No withholding
> Rp 450,000 per day - ≤ Rp4,500,000 per month	5% x (Gross Income per day – Rp 450,000 per day)
> Rp 4,500,000 per month - Rp10,200,000 per month	5% (Gross Income– Daily Non-Taxable Income)
>Rp 10,200,000 per month	Art. 17 Rate x (Annualized Gross Income – Non-Taxable Income)
If paid monthly	Art. 17 Rate x (Gross Income – Non-Taxable Income)

NEW Non-Permanent Employee Tax Calculation (PMK-168)	
Daily Gross Income	Daily TER/Rate
≤ Rp 450,000	0% x Daily Gross Income
> Rp 450,000– Rp 2,500,000	0.5% x Daily Gross Income
> Rp 2,500,000	Art. 17 Rate x 50% x Daily Gross Income
If paid monthly	Monthly TER x Monthly Gross Income

3. Non-Employee

Previous Non-Employee Tax Calculation (PER-16/2016)	
Condition	Tariff
Non-recurring income.	Art. 17 Rate x (Gross Income x 50%)
Recurring income, has Taxpayer ID (*NPWP*), only earn income from one Income Provider and does not earn any other income.	Art. 17 Rate x ((Gross Income x 50%) - Monthly Non-Taxable Income) *Accumulative
Recurring income does not have Taxpayer ID (*NPWP*) and/or earns income from more than one Income Provider.	Art. 17 Rate x (Gross Income x 50%)[6] *Accumulative

NEW Non-Employee Tax Calculation (PMK-168)
Art. 17 Rate x (Gross Income x 50%)[7] *Not Accumulative

[6] If the individual does not have an NPWP, then there is a 20% surcharge in addition to the income tax due.
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For non-employees, gross income is determined as follows:

Gross Income Determination for Non-Employee (Individual)	
Service Type	**Gross Income Determination**
Catering Service	Total income earned in any name and form (i.e. including food & beverage ingredients)
Doctor Service	For doctors who practise at a Hospital and/or Clinic, gross income = Doctor's fee paid by the patient through the Hospital and/or Clinic **before deducting other costs or shared revenue for the Hospital and/or Clinic**
Other than Catering & Doctor Services	Total Income in any name and form earned by Non-Employee from the Tax Withholder, excluding: 1) Payment of Wages for Manpower hired by the Non-Employee (if supported with the contracts and payment information for that Manpower) 2) Payment of Goods/Materials in relation to the service provided (supported with the invoices for purchase of the goods/materials) 3) Payment of any Service Fees to a 3rd party hired by the Non-Employee (supported by 3rd party invoices PLUS written agreement and its payment receipt) AND, in all cases, the agreement between the Non-Employee and the Tax Withholder must specifically identify these costs

4. Other Tax Subject

Previous Other Subject Tax Calculation (PER-16/2016)	
Tax Subject	Tariff
Activity Participants	Art. 17 Rate x Gross Income
Employee withdraws Pension Fund	Art. 17 Rate x Gross Income *Accumulative
Ex-Employee receives bonus or other income from previous employer	
Member of Board of Commissioners/Supervisors who receives non-regular Income & does not act as a Permanent Employee	

NEW Other Subject Tax Calculation (PMK-168)	
Tax Subject	Tariff
Activity Participants	Art. 17 Rate x Gross Income *Not Accumulative
Employee withdraws Pension Fund	
Ex-Employee receive Bonus or other income from previous employer	
Member of Board of Commissioners/Supervisors who receives non-regular income & does not act as a Permanent Employee	Monthly TER x Gross Income *Not Accumulative

RECOMMENDED ACTIONS/COMMENTS:

1) PMK-168 only adjusts the calculation of Article 21 income tax **during the year**. At year-end each individual must still prepare and lodge a Personal Income Tax Return that discloses all income, calculates the tax using the Article 17 Tax Rates and then deducts any credits for Article 21 income tax deducted during the year. This also applies for permanent employees that have only worked for one employer for the entire year, however, that employer's tax calculation in December will be a "perfect" calculation of the employee's annual tax liability unless that employee earns non-final taxed income from another source.
2) At present, it is still possible for an individual to not possess/provide an NPWP to the employer. Therefore the existing 20% surcharge (uplift) will still apply if an employee does not provide an NPWP.
3) Non-permanent employees that are paid monthly are taxed using the monthly TER per Category A, B or C. However, unlike permanent employees, there is no re-calculation of annual tax using the Article 17 Tax Rates applied to the annual income from that employer.
4) The employer/service recipient is required to provide *Bukti Potong* (withholding tax slips) to non-permanent employees and non-employees in accordance with when payments are made. For example, each month if the employee is paid monthly, per day if the non-permanent employee is paid daily, or on payment of the fee when the fee for a consultant is paid. The *Bukti Poto*ng must be provided no later than the end of the next following month. A *Bukti Potong* is also required if there is no withholding tax due.
5) Benefits in kind need to be identified and included as income tax objects. A gross-up calculation will then be required assuming the employer is responsible for the tax. Careful consideration is required to ensure this calculation does not create unexpected consequences for the employer or employee.
6) Given the need to perform a re-calculation for permanent employees in December or their Final Tax Period (if they leave), it is good practice to maintain a parallel tax calculation during the year that uses the Article 17 Tax Rates so that both the employer and employee are aware of the potential under/over tax payment that is accumulating.
7) Permanent employees that join a new employer can provide the 1721-A1 from the previous employer so that the new employer takes the income and tax into consideration when performing the re-calculation for December/the Final Tax Period.
8) For non-permanent employees, if the wages are not paid daily, then the wages are divided by the number of days required to earn the wage to determine an equivalent daily wage for the purposes of deciding what Category D TER applies.

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