Tax Regulation Updates

This Alert summarises recent tax regulations regarding:

- Amendment to regulation on Foreign Tax Credits
- Regulation regarding taxation treatment of E-commerce transactions
- Amendment to regulation on the use of book value for the transfer and acquisition of assets in merger, consolidation, expansion, or acquisition
- Regulation on providing food and beverages for all employees, and benefit in-kind in certain area

AMENDMENT TO REGULATION REGARDING PROCEDURE FOR CLAIMING A FOREIGN TAX CREDIT

On 31 December 2018, the Minister of Finance ("MoF") issued a new regulation, MoF Regulation No. 192/PMK.03/2018 ("PMK-192") regarding Procedures for Claiming a Foreign Tax Credit. PMK-192 revokes the previous Foreign Tax Credit ("FTC") regulation No. KMK-164/KMK.03/2002 ("KMK-164"). PMK-192 is effective from 31 December 2018 and applies for the FTC calculation for the 2018 fiscal year.

The provisions of PMK-192 are broadly similar to KMK-164, however, PMK-192 provides more clarification and guidance regarding FTC in addition to requiring analysis on a per-income per-country basis, and imposing a new limit to the amount of FTC that can be credited where there is a tax treaty in effect.

Scope exclusion

PMK-192 does not apply for determining FTC in relation to any dividend income subject to the Controlled Foreign Corporation ("CFC")/recognition of deemed dividend referred to in Article 18 paragraph 2 of the Income Tax Law as regulated under MoF Regulation No. 107/PMK.03/2017.

Recognition of foreign income and timing

PMK-192 stipulates how and when several types of foreign income should be accounted for FTC, as summarized below:

Types of foreign income	Type of foreign income to be combined with domestic income	Timing of income recognition
Income from business activities, including from a branch or a representative	Net income	Fiscal year when the income is earned
Other income – such as dividend (other than those subject to CFC), interest, royalty, services fees and rental	Net income	Fiscal year when the income is received

Trusts

It is interesting to note that PMK-192 also regulates FTC for Trusts which was not covered in KMK-164.

A Trust is defined as a scheme, arrangement or relationship based on written agreement between an individual or entity acting as a founder and an individual or entity acting as the holder of ownership of an asset with an obligation to manage that asset for the benefit of the beneficiaries.

The source of income originating from (offshore) Trust is determined based on the country where the trust is formed or established. The timing of income recognition, basis of FTC recognition and documents used (where the income recipient / beneficiary is an Indonesian resident taxpayer) are summarized below:

Tax treatment of the Trust	The timing of income recognition	FTC claimable in the annual tax return	Supporting documents
Offshore Trust is subject to foreign tax at the Trust level	Fiscal year when the income is earned by the Indonesian resident tax payer	Income tax or portion of income tax paid on income earned by the taxpayer outside Indonesia – subject to any maximum FTC credit, as discussed below	Proof of foreign income tax payment (can be replaced by overseas annual income tax return submitted by representatives and / or proof of foreign income tax payment made by the Trust)
Offshore Trust not subject to foreign tax at the Trust level	Fiscal year when the income is earned or received by the Indonesian resident taxpayer , whichever is earlier	Income tax paid on income received by the taxpayer outside Indonesia – subject to any maximum FTC credit, as discussed below	Similar to above

Foreign losses

Consistent with KMK-164, PMK-192 does not allow foreign losses to be included in calculating taxable income in Indonesia. The exception is that losses derived from assets or activities that are effectively connected with a foreign branch can be first combined with any net income from that foreign branch before determining the amount of net income to be recognized in Indonesia.

FTC calculation

FTC can be claimed in the fiscal year when the foreign and domestic income are combined. FTC is now calculated based on per type of income and per country or jurisdiction, whereas KMK-164 permitted a broader per country calculation (known as per country limitation).

In addition to the existing limitation of claiming FTC based on the lower of the amount actually payable (under Indonesian income tax law) or the foreign tax paid, PMK-192 also imposes an additional limitation if a tax treaty is available. In such cases the maximum FTC is the lower of the tax due under that tax treaty, the amount actually payable (under Indonesian income tax law) or the foreign tax paid. This has potential implications if an Indonesian taxpayer does not make use of a tax treaty and suffers a higher rate of foreign tax – PMK-192 indicates this excessive tax will not be considered.

Exchange rate for determining amount of foreign tax

The amount of foreign tax paid in foreign currency should be converted into Rupiah using the MoF exchange rate when the foreign tax was paid/payable/withheld.

For a taxpayer who has obtained an approval to use bookkeeping in English and US Dollar, the amount of foreign tax in currency other than US Dollar should be converted into US Dollar using the Bank of Indonesia ("BI") middle rate or the daily foreign exchange rate spot rate at the international market if the BI middle rate is not available when the foreign tax is paid/payable/withheld.

RSM Comments

It is good that PMK-192 regulates FTC for foreign Trust, which is not previously done by KMK-164. We consider there are still some issues that may need to be clarified in order to give certainties for taxpayers:

- Definition of Net Income: the reference to the Net Income provided in the Attachment of PMK is not consistent with the explanation provided in the regulation. We are of the view that Net Income mentioned in the regulation (article 4) refers to net income after the calculation of underlying tax that may be paid in the respective jurisdiction;
- Tax losses derived from assets or activities that are effectively connected with the foreign branch can be accounted in Indonesia – what would be the evidence to convince the ITO that such losses are effectively connected with the foreign branch?
- Taxpayers should ensure they make use of tax treaties to avoid potential reduction to the FTC. This requires an understanding of the foreign country's rules for use of a tax treaty and may require an application to the Director-General of Taxation for the Certificate of Domicile.

TAXATION TREATMENT FOR E-COMMERCE TRANSACTIONS

The MoF issued MoF Regulation No. 210/PMK.10/2018 concerning Taxation Treatment of Trade Transactions through Electronic System or E-Commerce ("PMK-210") dated 31 December 2018 which is effective from 1 April 2019.

General

PMK-210 is primarily focused on marketplace platform providers and their users (traders and buyers, service providers and service recipients). It does not create a new tax system for e-commerce but clarifies the tax obligations based on the Value Added Tax ("VAT"), Income Tax, and Customs Laws. PMK-210 is also applicable to platform of non-marketplaces such as online retail, classified ads, daily deals, and social media.

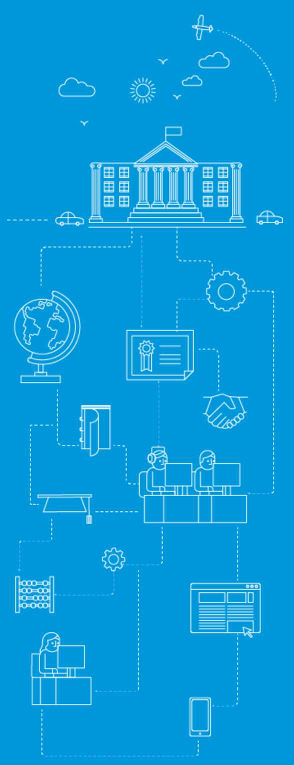
In addition to these, Over The-Top providers serving the transportation sector (e.g. Gojek and Grab) are also classified as the provider of a marketplace platform.

PMK-210 only regulates sellers and service providers from Indonesia that transact products and services through an Indonesian marketplace platform. It is not clearly mentioned whether foreign sellers trading through Indonesian marketplace platform will also be captured and required to be registered for tax purposes in Indonesia.

Administration & tax obligations

The administration and tax obligations that should be fulfilled are outlined below:

1. Marketplace platform providers are required to:
    a. Have a Tax ID ("NPWP"), and register as a VAT-able company ("PKP"), regardless of whether they are classified as a small entrepreneur that would otherwise not be required to register for VAT;
    b. Issue a VAT Invoice, collect, pay, and report VAT related to: (1) the provision of marketplace platform services to traders and service providers, (2) delivery of goods and services performed by the marketplace platform (i.e. providing goods/services in its own name) and (3) delivery of goods and services other than number (1) and (2);
    c. Report the total transactions conducted in the marketplace through a special report to be attached to the monthly VAT Returns. Further provisions regarding the form of reports and procedures to report total trade transactions shall be regulated by the Director General of Taxes ("DGT");
    d. Comply with the prevailing income tax regulations.
2. Traders and service providers who sell through the marketplace platform are required to:
    a. Provide their NPWP to the marketplace platform provider. If they are not yet registered for NPWP, they can choose to either obtain a NPWP through NPWP registration application provided by the DGT or provided by the marketplace platform providers, or notify their Citizen Registration Number ("NIK"") to the marketplace platform provider;
    b. Register as a PKP should their turnover exceed IDR 4.8 billion in a year. If the turnover does not yet exceed IDR 4.8 billion in a year, they can choose to be registered as a PKP;
    c. Issue a VAT Invoice and collect, pay, and report VAT every month. The VAT rate is 10% from the transaction value of delivery of taxable goods and services;
    d. Fulfill income tax obligations in accordance with applicable tax regulations.



For example: pay final tax at a rate of 0.5% of the turnover in the event that the turnover does not exceed IDR 4.8 billion in a year and the period for use of this facility has not yet expired.

3. Other e-commerce activities such as online retail, classified ads, daily deals, and social media are also compulsory to comply with the provisions related to VAT, Luxury Sales Goods Tax, and Income Tax according to prevailing tax regulations.

PMK-210 states that the DGT may perform tax compliance reviews on E-commerce transactions in accordance to the prevailing tax regulations based on (i) financial information obtained from financial institutions and others, (ii) data and information obtained from government institution, association and other party, and/or (3) data and information available in the DGT's information system.

Importation of goods

PMK-210 sets out regulations concerning importation of goods for which the transactions are carried out through marketplace platform providers. If these are high frequency importers then they need to register with the Director General of Customs and Excise ("DGCE").

The following system then applies provided the shipments use a "Postal Organizer" and the Free on Board ("FOB") customs value is no more than USD 1,500 :

- The marketplace providers should submit an e-invoice on every import.
- The marketplace provider should submit an e-catalog to the DGCE and update the DGCE for any changes.
- The marketplace providers should use delivery duty paid ("DDP") scheme and calculate and pay the import duty and import taxes and then report these.

The DGCE registration may be frozen and revoked if marketplace platform providers do not fulfill their obligations to pay/report customs duty and import taxes.

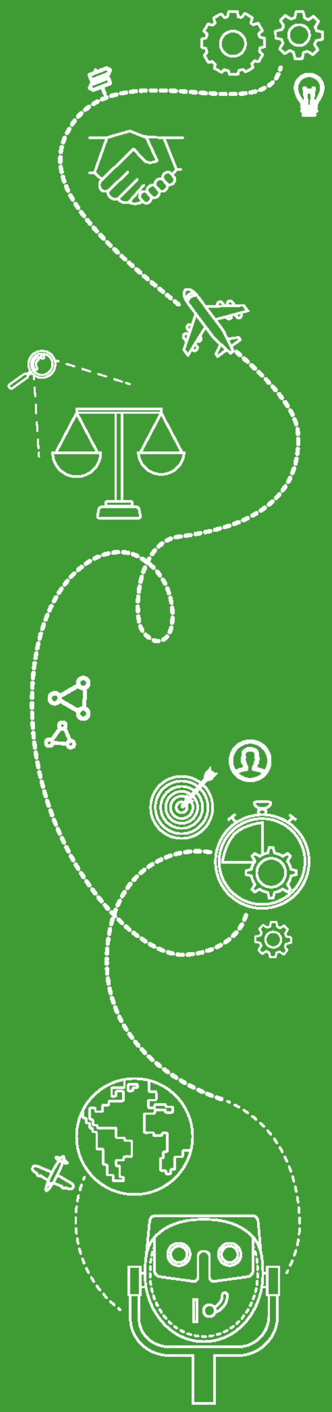
The prevailing regulations/procedures relating to imports will apply for all other import transactions (i.e.. where the FOB customs value exceeds USD 1,500 or the import does not use the DDP scheme, or if the marketplace platform provider has not registered with the DGCE).

Further provisions regarding the importation of goods by Indonesian marketplace platform providers shall be regulated by the DGCE.

RSM Comments

Following the issuance of PMK-210, the following issues are important to note:

- It is not clearly mentioned whether foreign sellers trading through Indonesian online marketplace will also be captured and required to be registered for tax purposes in Indonesia.
- Marketplace platform providers should advise the regulations to sellers/service providers using their platforms as soon as possible so they are aware of the requirements, especially on the administrative obligations which require sharing of data and information with the platform providers.
- Marketplace platform providers should conduct self-review whether it is in compliance with administrative obligations under the current tax regulations. Under PMK-210, marketplace platform providers should get ready and allocate appropriate resources to track and report total E-commerce transactions in the monthly VAT Return. Self-review should also be conducted to ensure VAT obligations are appropriately complied with in relation to provision of marketplace services, deliveries of goods and services on its own account .
- Sellers and service providers conducting E-Commerce transactions should assess whether it is complying with the existing tax regulations.
- Market platform providers should assess the need for Customs Registration through DGCE. This is subject to further issuance of implementing regulation on how to register/report.



AMENDMENT TO REGULATION FOR THE USE OF BOOK VALUE FOR THE TRANSFER & ACQUISITION OF ASSETS IN MERGER, CONSOLIDATION, EXPANSION, OR ACQUISITION

The MoF issued regulation No. 205/PMK.010/2018 ("PMK-205") dated 31 December 2018 to amend MoF Regulation No. 52/PMK.010/2017 ("PMK-52") regarding the Use of Book Value for the Transfer and Acquisition of Assets in Merger, Consolidation, Expansion ("spin-off"), or Acquisition.

PMK-205 is issued to support the Government's plan to establish BUMN holding companies and to encourage large-scale foreign direct investment.

Consistent with PMK-52, PMK-205 states that taxpayers shall use market value for transfer of assets in merger, consolidation, spin-off, or acquisition. PMK-205 clarifies that for taxation purpose, taxpayers can use book value for transfer of assets in merger, consolidation, expansion, or acquisition, after obtaining an approval from the DGT.

PMK-205 includes two additional types of taxpayers which can use book value for the transfer of assets in a spin-off, i.e.:

1. An Indonesian company whereby the entity resulting from the spin-off receives additional capital from foreign investor of at least IDR 500 billion, and
2. State Owned Enterprises ("BUMN") that receives additional capital participation from the Government as long as the spin-off is carried out related to the formation of a BUMN Holding Company.

PMK-205 also stipulates the additional documents required to apply for this tax facility i.e.:

1. Indonesian company (related to a spin-off involving foreign direct investment of at least IDR 500 billion): it is required to provide a Deed of Establishment or its Amendment of the Indonesian entity resulting from the expansion which should state the amount of new capital from the foreign investor;
2. BUMN (related to the formation of a BUMN Holding Company): it is required to provide a Letter of Recommendation from the Minister of BUMNs.

RSM Comments

Other provisions in PMK-52 remain unchanged. Therefore, all procedures to obtain approval from the Director-General of Taxation for the use of book value shall follow the provisions of PMK-52.

REGULATION ON DEDUCTIBILITY OF BENEFITS IN-KIND FOR REMOTE AREAS AND MEALS PROVIDED TO ALL EMPLOYEES

The MoF issued Regulation No. 167/PMK.03/2018 ("PMK-167") regarding tax deductibility for food and beverages provided for all employees and benefits in-kind in certain areas ("remote areas"). PMK-167 revokes the previous regulation i.e. PMK-83/PMK.03/2009 ("PMK-83") with effect from 19 December 2018.

Provisions for receiving a tax deduction when providing food and beverages for all employees

In addition to the costs of providing food and beverage (F&B) at the workplace for all employees, PMK-167 permits a deduction for providing a non-money coupon that can be exchanged for F&B by employees whose work prevents them utilizing the facility at the workplace (e.g. marketing, transportation).

The value of F&B coupons can be deducted from the employer's gross income, as long as the coupon value is considered reasonable. The value is considered to be reasonable if the coupon value does not exceed the expenditure for providing food and beverage per employee at the workplace.

Benefit in-kind in certain (remote") areas

The provisions related to deductions for benefits in-kind are similar to PMK-83 with the following revisions:

- Clarifies that deductible transportation expense should be transportation expense incurred for the employees and their families provided for the employee's first assignment and at the end of assignment.
- The eligible benefits in-kind treated as deductible expenses are expanded to include vehicles owned and used by the company for certain employees due to their position or job.
- PMK-167 stipulates that expenditures to provide benefits in-kind which have useful lives of more than 1 year should be depreciated in accordance with Article 11 of the Income Tax Law. If the expenditures have useful lives of less than 1 year, it should be expensed in that year.
- Consistent with the general rules for deduction of expenditure on vehicles for certain employees, the acquisition and significant repair of vehicles used by certain employee that have useful lives of more than 1 year, it should be deducted through depreciation in accordance with Article 11 of the Income Tax Law based on 50% of the amount of depreciation calculated. Routine maintenance or repair expense of vehicle used by certain employee should be deducted based on 50% from the amount of routine maintenance or repair expense in the year of expenditure.
- As a consequence of the issue of IUPK-OP ("*Izin Usaha Pertambangan Khusus Operasi Produksi")* under the Mining Law, PMK-167 now adds a provision stating the period of time for remote area approval is 10 years for the holders of IUPK-OP provided: (a) The IUPK-OP constitutes a change in the form of a mining business from a Contract of Work ("CoW"); and (b) That CoW regulates the benefit in-kind provision for the period of the contract (nailed down). The period of remote area approval for non-IUPK-OP holders remains 5 years. For non-IUPK-OP holders, the remote area approval is for 5 years.

In the event that at the end of the above period, the taxpayer's business location still meets the criteria for a remote area, the taxpayer can submit an application to the DGT and may be granted an extension of 10 years or 5 years, respectively, depending on whether it is an IUPK-OP holder or non-IUPK-OP holder.

RSM Comments

There should be no significant impact for taxpayers other than having arrangements as mentioned above. In addition, we also noted the followings:

- PMK-167 is effective from 19 December 2018. However, existing approvals given for remote areas based on PMK-83 are still applicable up to the end of their validity period.
- As for new application or extension application for certain area which were submitted to the DGT prior to 19 December 2018 and are still outstanding, these will be processed under PMK-167.

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