



New Regulation on Tax Holiday

Minister of Finance Regulation No. 35 /PMK.010/2018 ("PMK-35") dated 29 March 2018

To promote additional investment and economic development the Minister of Finance has issued a new regulation regarding tax holidays – Minister of Finance Regulation No. 35 /PMK.010/2018 (“PMK-35”) dated 29 March 2018. This regulation was released, and is effective, on 4 April 2018.

PMK-35 revokes the previous regulation, Minister of Finance Regulation No.159/PMK.010/2015 and its amendment, Minister of Finance Regulation No.103 /PMK.010/ 2016 (together, “PMK-159”).

The tax holiday offered is a reduction of the corporate tax otherwise payable on taxable profits generated for a specific period from a minimum level of investment in specified “pioneer” industries.

Significant changes in PMK-35 compared to PMK-159

There are significant differences between PMK-35 and PMK-159 that, in general, should increase the ability for investors to make use of tax holidays. The table below summarizes the key differences:

	PMK-35 (the new regulation)	PMK-159 (the old regulation)
Investment threshold for tax holiday	IDR 500 billion.	IDR 1 trillion except the Information, Communications & Telecommunications (“ICT”) industry that are subject to a threshold of IDR 500 billion.
Reduction to corporate tax payable	100% for the initial period of the tax holiday and 50% for the following 2 years.	10-100%; except investment in the ICT industry that was subject to a maximum reduction of 50% of the corporate tax payable if the investment was IDR 500 billion rather than the general IDR 1 trillion threshold.
Period of the tax holiday	<ul style="list-style-type: none"> • 5 years if the new capital investment is at least IDR 500 billion but less than IDR 1 trillion; • 7 years if the new capital investment is at least IDR 1 trillion but less than IDR 5 trillion; • 10 years if the new capital investment is at least IDR 5 trillion but less than IDR 15 trillion; • 15 years if the new capital investment is at least IDR 15 trillion but less than IDR 30 trillion; • 20 years if the new capital investment is at least IDR 30 trillion. 	5-15 years, with up to 20 years for projects of national strategic importance.
When does the tax holiday commence?	Starting the tax year when the first sales are made to the market (of the products from the business activity that is receiving the tax holiday) or the products are used internally for further production process.	The tax facility can be used after the taxpayer has fulfilled some criteria such as: <ul style="list-style-type: none"> • Has commenced commercial production • The taxpayer has realized the value of investment at least as much as the investment plan • The business sector is in accordance with the investment plan and it is included in the pioneer industry criteria.

	PMK-35 (the new regulation)	PMK-159 (the old regulation)
Requirement to place funds in Indonesia	No requirement.	10% of the proposed investment must be deposited in an Indonesian bank prior to the realization of the investment.
Timing for application for tax holiday	The application for tax holiday must be made before the commencement of commercial production but no later than 1 year after the issue of the capital investment registration from BKPM (the Indonesian Capital Investment Coordinating Board).	The application for the tax holiday should be submitted to BKPM before commencement of commercial production.
Requirement to obtain Advance Pricing Agreement regarding related party transactions involving exports	No requirement.	Required, otherwise the tax holiday facility will be revoked.
The reporting obligation after the taxpayer receives the tax facility	<ol style="list-style-type: none"> 1. Annual report of capital investment realization (since receipt of the tax facility until the commencement of commercial production) 2. Annual report of production realization (since the commencement of commercial production until the end of the tax facility period). 	<ol style="list-style-type: none"> 1. Periodic report of fund's placement in Indonesian bank 2. Periodic report of audited capital investment realization 3. Periodic report of production realization during the tax facility period 4. Periodic report of the company's related party transactions, as requested by the Director-General of Taxation.

Which industries are included as Pioneer Industries?

The details of these industries and the related products are to be further regulated by BKPM. In addition to the below, an investor may also propose that another industry is added to the list. PMK-35 provides a process for this that requires the involvement of the responsible ministry, the Minister of Finance and BKPM.

- *Integrated upstream basic metal*
- *Integrated oil and gas refinery*
- *Integrated petrochemicals (from oil, gas, or coal)*
- *Integrated inorganic basic chemicals*
- *Integrated organic basic chemicals (from agriculture, plantation, or forestry products)*
- *Integrated pharmaceutical raw materials*
- *Semi-conductor and other main components of computers which are integrated with computer manufacturing*
- *Main components of communication equipment which are integrated with smartphone manufacturing;*
- *Main components of health equipment which are integrated with manufacturing of irradiation, electro-medical, or electro-therapy equipment*
- *Main components of industrial machinery (such as electric engines or combustion engines) which are integrated with machinery manufacturing*
- *Main components of machinery (such as pistons, cylinder heads or cylinder blocks) which are integrated with motor vehicle manufacturing*
- *Robotics components which are integrated with the industry for making manufacturing machines*
- *Main components of vessels which are integrated with vessel manufacturing*
- *Main components of aircraft (such as engines, propellers, rotors or structural components) which are integrated with aircraft manufacturing*
- *Main components of trains (such as engines or transmissions) which are integrated with train manufacturing*
- *Power plant machinery*
- *Economic infrastructure*

Transitional Provisions

The transitional provisions stipulated in PMK-35 are:

1. Taxpayers that were already granted the tax facilities based on the old regulation can continue to use the facility until the end of the facility period.
2. Proposals from BKPM for granting a tax holiday that were prepared based on the old regulations and already submitted to the Minister of Finance after 16 August 2015 but not yet decided, will be processed based on PMK-35.

Consequence if tax holiday is revoked

In the event the tax holiday facility is revoked (e.g. due to failure to meet the minimum investment of IDR 500 billion), then PMK-35 stipulates that a taxpayer must repay any corporate tax that was previously subject to the tax holiday. This corporate tax is also subject to late payment penalties of 2% per month.

Other requirements

Taxpayers that receive the tax holiday facility are required to:

- Maintain separate bookkeeping between the income subject to the tax holiday facility and other income that is not subject to the tax holiday (e.g. income from other business activities).
- If a taxpayer has costs which cannot be separately allocated for the calculation of taxable income, these will be allocated proportionally based on the income subject to the tax holiday facility and the other income.
- Deduct and collect tax from other parties in accordance with the prevailing regulations.

Other tax facility (income tax facility for capital investment in specific sectors and/or in specific areas)

As long as the tax holiday facility is running, the taxpayer is not eligible for the income tax facility for capital investment in specific sectors or areas as stipulated in Government Regulation No. 18 Year 2015 which has been amended by Government Regulation No. 9 Year 2016 regarding Income Tax Facility for Capital Investment in Certain Business Sector and/or Area ("GR-9"). A taxpayer who has gained approval for a tax holiday facility based on PMK-35 may make use of the income tax facility under GR-9 if the tax holiday facility based on PMK-35 has expired and the investment still meets the criteria for granting the income tax facility for capital investment.

RSM COMMENTS

Compared to PMK-159 the provisions in PMK-35 are easier to be fulfilled (lower threshold, more industrial sectors and elimination of subjective requirements) and provide more certainty regarding the reduction in the amount of corporate tax payable (always 100% reduction to the corporate tax payable) and the period.

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