



Portfolio Investment No Longer Subject to Foreign Ownership Restrictions

by Arien Kartika Sari

The Investment Coordinating Board (“**BKPM**”) recently promulgated an amendment to BKPM Regulation No. 14 of 2015 on Guidelines and Procedures for Investment Principle Licence by BKPM Regulation No. 6 of 2016 (“**New Regulation**”), which came into effect on 8 June 2016. The New Regulation aims to, inter alia, provide more clarity on portfolio investment and better ease of business for companies located in the Special Economic Zone (*Kawasan Ekonomi Eksklusif*).

Previously, it was never clearly stated in any regulation whether a listed foreign-owned company (“**PMA**”) is subject to the Negative Investment List (“**DNI**”). In practice, the BKPM used to treat a listed PMA company the same way as a private PMA company if the company had a foreign controlling shareholder. Consequently, the capital structure of such a company was subject to the restrictions as set out in the DNI. With the New Regulation, BKPM has expressly decided to view such a condition as exempt from foreign investment restrictions, making the DNI no longer applicable to listed PMA companies.

The New Regulation allows companies that have obtained a Principle Licence and located within a certain industrial area or the Special Economic Zone to commence construction prior to obtaining a Building Permit (*Izin Mendirikan Bangunan*) and relevant environmental licences (e.g. UKL-UPL), and application for such licences may be made simultaneously at the construction stage but should be in possession before the company starts commercial production.

With regard to the Investment Licence, which is essentially a principle licence that is issued within three hours of application, the New Regulation stipulates that



it may be granted to companies that fulfil the following criteria:

- a. Minimum investment value of Rp100,000,000,000 (one hundred billion Rupiah);
- b. Employment of minimum 1,000 (one thousand) workers;
- c. Certain industry, zone or geographic area that is subject to Inland Free Trade Arrangement facilities;
- d. Operates in a certain industry that is part of a supply chain;
- e. Located in a Special Economic Zone; and/or
- f. Infrastructure projects in certain sectors, such as energy and mineral resources, communications and informatics, transportation, public works, and housing

Income Tax on Transfers of Land and/or Building Rights

by Febi Jaya Conggih



The Indonesian Government recently issued Government Regulation Number 34 Year 2016 concerning Income Tax on Transfers of Land and/or Building Rights and Conditional Sale and Purchase Agreements for Land and/or Building and their Amendments (“**GR No. 34/2016**”). GR No. 34/2016 replaces Government Regulation Number 48 Year 1994 concerning Income Tax Payment on Transfers of Land and/or Building Rights. GR No. 34/2016 will come into force on 7 September 2016.

GR No. 34/2016 provides that income tax will be imposed on income earned by the assignor of land and/or building rights through sale and purchase, exchange, relinquishment of rights, transfer of rights, auctions, grant, inheritance, or other means agreed between the parties. For transfers by way of sale and purchase, income tax has already accrued when the parties, the assignor and the assignee enter into a conditional sale and purchase agreement.

The income tax rates to be paid by the taxpayer are divided into three (3) categories:

- (a) 2.5% (two point five percent) of the gross value of the transfers, other than the transfer of land and/or building rights in the form of Small Houses or Small Flats, made by taxpayers who conduct land and/or building transfer as their main business activities;
- (b) 1% (one percent) of the gross value of the transfers of Small Houses and Small Flats, made by the taxpayer who engages in the acquisition of land and / or buildings; or

- (c) 0% (zero percent) on transfers to the government, state-owned enterprises that receive special assignments from the Government, or regionally owned enterprises that receive special assignments from the head area, as defined in the laws regarding land acquisition for construction in the public interest.

The Small Houses and Small Flats above mentioned shall meet the criteria of small houses and small flats that receive facilities exempted from Value Added Tax in accordance with the provisions of legislation in the field of taxation.

Article 2 paragraph (2) GR No. 34/2016 states that if the sale and purchase of land and/or buildings is conducted by the parties who are affiliated with each other, then the transfer value must be calculated from the value that should be accepted or obtained by the assignor. On the contrary, if the assignor is not affiliated with the assignee, the value of the transaction is calculated from the value that is actually received or acquired by the assignor. In terms of the transfer of land and/or building rights, this is done by means of exchange, relinquishment of rights, transfer of rights, grant, inheritance, or other means agreed between the parties. The value of the transaction should be calculated from the value that should be accepted or obtained, based on the market price.

Previously, the income tax on transfers of land and/or buildings was payable at the time before the parties entered into a deed of sale and purchase of land and/or buildings. In GR No. 34/2016, the income tax is already payable when the parties enter into a conditional sale and purchase agreement, and when it is amended. Income that is subject to tax is the income of the seller whose name is stated in the conditional sale and purchase agreement or in the event of changes of the buyer, or income of the buyer whose name is listed in the conditional sale and purchase agreement before a change or amendment.

Amendment of Electric Power Business Licensing Procedures

by Rizkita Widya Murwani



On 4 May 2016, the Indonesian Minister of Energy and Mineral Resources amended the Ministerial Regulation No. 35 of 2013 concerning the Procedures for Electric Power Business Licensing (“**Permen ESDM No. 35/2013**”) by enacting the Ministerial Regulation No. 12 of 2016 (“**Permen ESDM No. 12/ 2016**”). The aforementioned amendment was due to the fact that the extension of low-voltage services to subscribers required improvement. An insufficient number of enterprises capable of constructing and installing low-voltage electric power utilities in several areas had also been duly noted as an issue in enacting the regulation.

With regard to the provisions stipulated under Permen ESDM No. 35/2013, electric power supporting activities include:

- a. consultation of electric power supply installation;
- b. construction and installation of electric power supply;
- c. electric power inspection and testing;
- d. electric power maintenance;
- e. research and development;
- f. education and training;
- g. lab-test equipment and electric power utilities;

- h. electric power competency resources certification; and
- i. electric power supporting business certifications.

Prior to the enactment of Permen ESDM No. 12/2016, the aforementioned activities were limited to undertaking by state-owned enterprise, regional government-owned enterprise, private companies and cooperatives. Subsequent to the amendment of Permen ESDM No. 35/2013, companies which are non-legal entities may also conduct electric power supporting activities under Permen ESDM No.35/2013 with the following conditions:

- a. it is applicable for a connected power capacity of up to 900 VA with a standard picture installation;
- b. the project is located within the registered domicile of the company.

Although the application for an electric power supporting business permit requires quality management system documents subject to the Indonesian National Standard as a part of the technical requirement, the enactment of Permen ESDM No.12/2016 stipulates that non-legal entity companies are not subject to the aforementioned requirement, and may submit a quality management system document without having it to satisfy the Indonesian National Standard. Therefore, the non-legal entity companies are only obligated to collect administrative and technical requirements with the exemption of the standardized document.