



Regulation on Repatriation of Investment Assets

by Megawati Septiandara



In October 2017, the Minister of Finance Regulation No. 141/PMK.08/2017 (“**PMK No. 141/2017**”) was enacted, in which the government tries to provide a clear and unified regulation regarding the procedure for placing investment of repatriated assets in both financial and non-financial markets in the context of tax amnesty. Since the issuance of Law No. 11 of 2016 regarding Tax Amnesty, the government has been trying to encourage as many taxpayers as possible to repatriate their offshore assets.

Tax Amnesty is an exemption from paying unpaid taxes from previous fiscal years, given to taxpayers who have disclosed their onshore and offshore assets and paid certain Redemption Money. Further, in exchange for transferring their offshore assets into Indonesia, they will get lower Redemption Money rates.

Through PMK 141/2017, the government is trying to uphold its regulation simplification program. PMK 141/2017 revokes two prior regulations (PMK No. 119/2016 and No. 122/2016 and their amendments), where the procedure for asset repatriation and placement of investment for financial markets and non-financial markets were regulated separately.

Essentially, the procedure in PMK 141/2017 is very similar to the previous regulations, where the repatriated assets must be saved in a Special Account (Rekening Khusus) in Perception Banks appointed by the Minister of Finance as a Gateway. The amount stored in the Special Account must then be invested in certain investment instruments, in either financial markets or non-financial markets, in the form of:

1. Government securities;
2. State-owned Enterprises’ bonds;
3. State-owned Financing Companies’ bonds;
4. Financial instruments in Perception Banks appointed by the Minister of Finance;
5. Private company bonds whose trading is supervised by the Financial Services Authority;
6. Infrastructure investments through the government’s cooperation with business entities;
7. Investment in the real sector based on the priorities set by the government through the Decree of the Minister of Finance; and/or
8. Other investment forms.

Either Perception Banks, Investment Managers or Stockbrokers shall manage the financial markets investment, which comprises debt securities (including Medium Term Notes), sukuk (Islamic bonds), shares, savings, etc., while only Perception Banks can manage the non-financial markets investment, with mandatory power of attorney. The investment instrument for non-financial markets ranges from infrastructure, domestic direct investment to precious metals.

The term for investment remains the same as in previous regulations, i.e. minimum of 3 (three) years since the transfer from offshore account into the Special Account. During such period, the taxpayer may not transfer the asset back to outside Indonesia, but a new regulation allows them to change the investment instrument or transfer their asset to another Gateway. Upon such transfer, the taxpayer is obligated to submit their investment record letter to the new Gateway.

Green Economy Policy

by Margareth Gunawan



The Government Regulation No. 46 of 2017 regarding Environmental Economic Instruments (“**Regulation 46/2017**”) has recently been promulgated as an implementation of Article 43 (4) and Article 55 (4) of Law No. 32 of 2009 regarding Environmental Protection and Management (“**Law 32/2009**”). It has been in force since 10 November 2017 and is a realization of the national commitment to implement the “polluter pays” principle under Law 32/2009. Regulation 46/2017.

Regulation 46/2017 sets out a framework for environmental economic instruments, to include:

1. Development planning and economic activities;
2. Environmental funding;
3. Incentives and/or disincentives

The instruments of development planning and economic activities are carried out by the Central Government and the Regional Government for internalizing environmental aspects into development planning activities. Planning and implementation of development and economic activities must be implemented within the following sectors, at least:

1. Management of natural resources;
2. Spatial planning;
3. Conservation of natural resources; and
4. Preservation of environmental functions.

Environmental funding instruments are fund-management mechanisms that are used to finance environmental protection and management programs. The Environmental Funding Instrument consists of:

1. Environmental restoration guarantee;
2. Mitigation of pollution and/or environmental damage and environmental restoration; and
3. Trust/conservation aid.

The government may offer incentives and/or disincentives as part of several programs which are listed below:

- Development of eco-friendly labeling is to be provided by central government for eco-friendly products based on certain criteria;
- Procurement of eco-friendly goods and services are encouraged by ministries and government;
- Implementation of environmental taxes, levies and subsidies are implemented by the government;
- Development of eco-friendly financial service institution systems' address to encourage legal compliance and support eco-friendly investments;
- Development of trading system for waste and/or emissions disposal licenses' address to decrease the rate of environmental pollution, proportionally regulate the allocation of permits for waste and/or emissions disposal and to support the implementation of cross-regional environmental compensations/rewards and the implementation of sustainable impact management;
- Development of environmental insurance policies is to be implemented by central government;
- Development of a payment system for environmental services must be implemented the government by facilitating on contracts; and
- Performance appreciation system on environmental protection and management issues to be implemented by the government and applies to parties who prove diligent within the realms of environmental protection and natural resources.

The Exemption of Tax Income Reduction for the BPJS Social Insurance Fund

by Yustinus Prasetyo



On 24 October 2017, the Indonesian Ministry of Finance (the “**MoF**”) issued Minister of Finance Regulation Number 140/PMK.03/2017 concerning Procedures for the Exemption of Income Tax Derived from Investment or Assets Development of Social Insurance Funds (“**the Ministerial Regulation**”). The aim of the Regulation is to implement the provision in Article 5 sub-article (4) of Government Regulation No.73/2016 (the “**GR 73/2016**”). In general, both the Ministerial Regulation and the Government Regulation address the imposition of income tax by the Social Insurance Administrator (“**BPJS**”), an entity which was established to organize the Indonesian social insurance program.

Pursuant to Article 2 of the Ministerial Regulation, the BPJS consists of two departments, i.e., the BPJS of Health and the BPJS of Manpower. The two BPJS are different in terms of its function. Based on Article 1 of Ministerial Regulation, the BPJS of Health is tasked to provide the health Insurance program whereas the BPJS of Manpower has to run the insurance program for work accidents, pension, and death. Additionally, both BPJS's have to administer their own respective assets as mandated in Article 2 of Ministerial Regulation and importantly, Social Insurance Funds (“**DJS**”). In the case of the BPJS of Health, they must manage the BPJS of Health assets and the

Health DJS assets. As for BPJS of Manpower, they need to control the BPJS of Manpower assets and the Manpower DJS assets, which consist of (i) work accident insurance; (ii) death insurance; (iii) pension plan, and (iv) pension. For taxation purpose, each DJS shall has its own tax ID number as reflected in Article 2 sub-article (3) and (5) of the Ministerial Regulation.

In relation to tax imposition, the GR 73/2016 stipulates that every additional income received by the BPJS, both from domestic or international sources, which may be used for consumption or to increase the BPJS' wealth by name and in any form will deemed as the object of Income tax. However, there is an exemption for some income. One of them is the income that is derived from investment and assets development of the DJS. Article 5 sub-article (3) of the GR 73/2016 stated that such income must be free from income tax deductions. The Ministerial Regulation explains that it is not possible for the payer or the earner to impose income tax deductions if the source of income came from investment or assets development of either Health DJS assets or Manp DJS assets. This exemption would be applicable only if the BPJS has conformed to Article 2 sub-article (3) and (5) of the Ministerial Regulation as stated in the previous paragraph.

Further, in order for the BPJS to obtain benefit from the exemption, Article 4 of Ministerial Regulation requires BPJS to report the results of investment or assets development that are not subject to income tax deduction to the Tax Office where the BPJS headquarters is registered. The BPJS shall submit the report at the latest by:

- a) The end of July for the reporting period of January until June, and
- b) The end of January in the next year for the reporting period of July until December.

In the event that the income has been deducted, the BPJS is entitled to request a refund as long as they receive or collect the income as per 30 December 2016, up to before this Ministerial Regulation came into force, and the income in question must been paid and reported by the tax income deductor. In the light of this provision, it is clear that the government, specifically the MoF, wants to respond to the losses suffered by the BPJS throughout the years. It has been known to the public that since its operation in 2014, the BPJS is financially declining and has been recorded to suffer losses of up to 9 trillion IDR in 2017.

Payment of Income Tax from Land and/or Building Lease

by Kevin Partogi



As mandated by Article 4(2) of Law No. 36 of 2008, the Government issued Regulation No. 34 of 2017 (GR 34/2017) regarding Payment of Income Tax Gained From Land and/or Building Lease which was previously regulated by Government Regulation No. 29 of 1996 (GR 29/1996), as amended by Government Regulation No. 5 of 2002.

GR 34/2017 encompasses more types of income that can be subjected to final income tax. Unlike its predecessor, not only does it cover income gained from land and/or building lease by an individual or entity, it also covers the income gained from the performance of Build Operate Transfer (BOT) as the subject of income tax.

Further, a lessee who acts or is appointed as tax withholding agent is required to deduct the payment of land and/or building lease as income tax, otherwise, such income tax has to be paid by the Lessor. The tax withholding agent consists of the (i) activity organizer, (ii) permanent establishment, (iii) joint operation, (iv) foreign company representative, and (v) individual as domestic taxpayer appointed by the Director General of Taxes, Ministry of Finance.

Finally, GR 34/2017 regulates the implementation of income tax on:

1. Income gained from land and/or building lease. Which are:
 - a. Income gained from a lease which commenced before the issuance of GR 34/2017 is subject to income tax as stipulated under Article 17 Law No. 7 of 1983 (Law 7/1983) until the end of lease period.

- b. Income gained from a lease which commenced after the issuance of GR 34/2017 and paid before the issuance of GR 34/2017 2017 is subject to income tax as stipulated under Article 17 of Law 7/1983 throughout the lease period pro-rata, with the value of the lease that has been paid, starting from the commencement of the lease.
 - c. Income gained from Lessee who acts or is appointed as tax withholding agent is subject to be withheld, as stipulated under Article 21 of Law 7/1983.

2. Income gained from BOT performance which commenced before the issuance and ended after the issuance of GR 34/2017, which are:

- a. Income from the periodical payments of BOT which is gained throughout the contract is subject to income tax as stipulated in the legislation regarding income tax on BOT transactions.
 - b. Payment in the form of a Building received or to be received by the holder of land rights from Investors of BOT after the issuance of GR 34/2017 is subject to income tax under the same regulation.