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Regulation of the Exemption and Imposition of Duty on Land and Building Rights Acquisition in Jakarta

by Eivan Hadhy Prabowo

On 13 October 2016, the Governor of the Special Capital City Region of Jakarta (*Daerah Khusus Ibukota Jakarta* or "**DKI Jakarta**") issued the Governor of DKI Jakarta Regulation Number 193 of 2016 concerning the 100% Exemption on Duty on Land and Building Rights Acquisition on a Sale and Purchase Transaction or the Granting of New Rights and/or 0% Imposition of Duty on Land and Building Rights Acquisition in the Event of Inheritance or Probate Grant with a Tax Object Sales Value up to 2 Billion Rupiah ("**Pergub No. 193/2016**").

Upon the enactment of this regulation, the Governor of DKI Jakarta, as stipulated on Article 2 Pergub No. 193/2016, delegated the authority to grant the exemption and imposition of Duty on Land and Building Rights Acquisition (*Bea Perolehan Hak atas Tanah* or "**BPHTB**") to the Head of Service Office or State Officer appointed by Head of Service Officer.

As stipulated in Article 3 Pergub No. 193/2016, a 100% exemption on BPHTB is given to the Individual Tax Payer who is to gain the land and/or building title from a sale and purchase transaction or the granting of new rights with Tax Object Sales Value (*Nilai Jual Objek Pajak* or "**NJOP**") up to 2 Billion Rupiah, whilst, there is a 0% imposition on BPHTB and payable BPHTB given to the Individual Tax Payer who is to obtain the land and/or building titles in the event of inheritance and grant probate with NJOP up to Rp2 Billion.

The exemption and imposition of BPHTB as stated above can be filed by the Individual Taxpayer in accordance with these terms and conditions:

a) For the overdue and unpaid BPHTB payment obligation until the fiscal year of the application;
b) For one land and/or building object inhabited by the Individual Taxpayer, once in a lifetime for each exemption and imposition application;
c) Given to Indonesian Citizens who are Individual Taxpayers domiciled in DKI Jakarta for at least two consecutive years since the issuance of a DKI Jakarta Identity Card (*Kartu Tanda Penduduk* or "**KTP**").

Furthermore, the Individual Taxpayer has to file letters of application to the Head of Service Officer or State Officer appointed by the Head of Service Officer by attaching formal and material requirements to be inspected and examined. The Head of Service Officer or State Officer appointed by the Head of Service Officer will then issue the BPHTB exemption decision and validate the legalization on the Regional Tax Payment Slip (Surat Setoran Pajak Daerah) if the formal and material requirements fulfilled.

Note that the exemption and imposition of BPHTB are revocable if within 5 years since the exemption and imposition there are findings resulting the non-fulfilment of this regulation.

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Recent Development in Indonesia's Foreign Property Ownership Law

by Arien Kartika Sari

The Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency has issued Regulation No. 29 of 2016 on Procedure for Granting, Releasing, or Transferring Land Rights over Residential Houses to Foreign Nationals in Indonesia ("**Regulation 29**"). This regulation revokes the previous regulation issued in March 2016 on the same matter due to concerns that it was deemed not supportive of the idea of creating more relaxed rules for foreigners who wish to own a property in Indonesia. Regulation 29 sets out practical solutions to the implementation of Government Regulation No. 103 of 2015 regarding Ownership of Residential Houses or Property by Foreigners Domiciled in Indonesia.

Like the previous regulation, foreigners having the appropriate stay permit in Indonesia may own a detached house or an apartment with Right to Use or Hak Pakai. If the foreigner dies, the house or apartment can be inherited by their heir, as long as he or she also has a stay permit (if they are not Indonesian). This regulation also sets out the new minimum prices for house or apartments purchased by foreigners, which varies from one region to another. The highest price, as expected, is applicable in Jakarta, which is 10 billion Rupiah for a house and 3 billion Rupiah for an apartment. For houses, an additional rule applies, such as: (i) only 1 plot of land per person / family, and (ii) where the maximum land area is 2,000 square meters, though it can be larger with prior approval from the relevant minister.

New key issues in Regulation 29 are:

1. The property can also be transferred to another party (not only Indonesians) or encumbered under a mortgage (*Hak Tanggungan*) as long as it is in compliance with the prevailing regulations.
2. The foreigner can buy an existing residential property, which is a remarkable difference from the previous regulation, where the property must be bought from primary sale;
3. Land titles can be automatically converted

   There is a concept in Indonesian property law that the status of a land follows the status of the owner of the land. If a house or apartment has a title that is reserved for Indonesians only, i.e. Right to Own or *Hak Milik*, and Right to Build or HGB, then the title will be automatically converted to *Hak Pakai*. And if such property is then transferred to an Indonesian, the title will be re-converted to *Hak Milik* or HGB. The same principle also applies to apartments. The underlying title of the land will remain HGB, but the strata title of the units (known in Indonesia as *Hak Milik Atas Satuan Rumah Susun* or HMSRS) will be converted into Hak Pakai strata title or Hak Pakai Atas Satuan Rumah Susun or HPSRS. Only if all apartment units are owned by foreigners should the underlying land title be converted to Hak Pakai. This issue raises a concern that the underlying title should be have been converted before the sale and purchase occurs, which, if this provision is applied, will be technically incorrect. However, we have yet to see how this issue is played out in practice.

There are time periods for underlying titles owned by foreigners. Houses with Hak Pakai that is derived from a conversion of Hak Milik, as well as new condition or first sale of a HPSRS that is derived from a conversion of HMSRS, will be valid for 30 years, extendable for 20 years, and renewable for another 30 years. While houses with Hak Pakai that is derived from a conversion of HGB, as well as second sale HPSRS derived from a conversion of HMSRS, will be valid for the remaining term of the HGB or the HPSRS (whichever relevant), extendable for 20 years, and renewable for another 30 years.

Despite the argument that the automatic conversion of land title under Regulation 29 is technically incorrect, it is a notable change in Indonesian property law, that was previously unwelcoming to foreigners.

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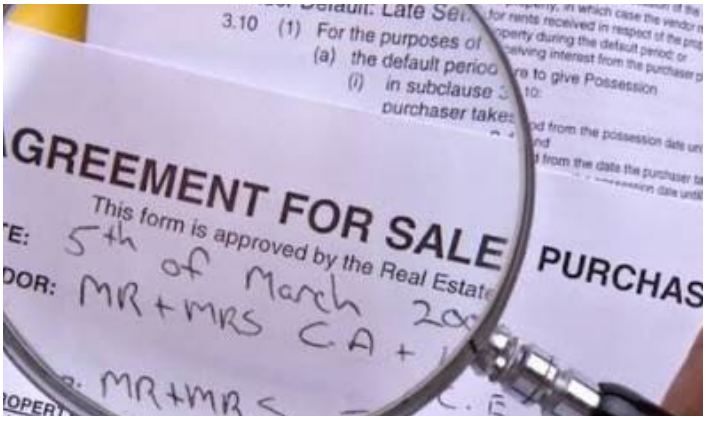
Income Tax on Transfer of Real Estate Income in Collective Investment Agreement Schemes

by Rizkita Widya Murwani

The Government has officially reduced the rate of Income Tax on real estate transfer income in Collective Investment Agreement Scheme Real Estate Investment Trusts. From 17 October 2016, as per Government Regulation No. 40 of 2016 concerning Income Tax on Transfer of Real Estate Income in Collective Investment Agreement Schemes ("**Regulation No. 40/2016**"), income tax on the real estate transfer will be down to 0,5% gross. The gross transfer includes the entire amount received by the Taxpayer of a Special Purpose Company or Collective Investment Agreement over real estate transfer, depending on the relation between the Taxpayer and the Special Purpose Company or Collective Investment Agreement.

Prior to the aforementioned regulation, the income tax on real estate transfer was rated at 5% of the gross transfer, as stipulated under the Law No. 36 of 2008 concerning the Fourth Amendment of Law No. 7 of 1983 concerning Income Tax. The reduction itself was enforced in order to provide in-depth support towards the financial sector market and to catalyze the growth of investment in the real estate sector. The enactment of Regulation No. 40/2016 was a form of implementation of the Economic Policy Package XI, dated 29 March 2016, with the issuance of Real Estate Investment Trust as one of the main concerns, as there was only one Real Estate Investment Trust in existence in Indonesia. The lack of existing Real Estate Investment in Indonesia is due to the double tax charge and higher tax rate compared to other countries. In order to overcome this issue, the Economic Policy Package XI was enacted with the following purposes:

1. The acceleration of the development of Real Estate Investment Trusts in order to support the financial sector through stock market capitalization;
2. The issuance of Real Estate Investment Trusts with a low tax rate increases efficiency in providing long term investment funds. Thus, it will support the infrastructure and housing development in accordance with the National Medium-Term Program 2015-2019.



The real estate transferred includes land and building upon it from the previous owner to a certain Special Purpose Company in a Collective Investment Agreement Scheme. Special Purpose Company is defined under Regulation No. 40/2016 as a limited liability company whose shares are owned by a Real Estate Investment Trust in a form of a Collective Investment Agreement of at least 99,9% of the equity for the benefit of the Real Estate Investment Trust.

The Income Tax shall be paid by the Taxpayer conducting any transfer of real estate before any deeds, decisions, agreements, or covenants concerning the transfer of real estate to the Special Purpose Company or Collective Investment Agreement signed by the authorities. The Taxpayer then shall provide a letter of notice to a local tax service office regarding the real estate transfer along with the required documents in order to receive a fiscal certificate from the tax service office. The documents required are as follows:

1. Copy of the effectivity of Real Estate Investment Trust application statement, published and legalized by the Financial Services Authority;
2. Statement from the Financial Services Authority stating that the taxpayer is transferring the real estate entered into transaction with a special purpose company or collective investment agreement;
3. Statement letter stating that the taxpayer is transferring the real estate entered into the transaction with a special purpose company or collective investment agreement with stamp duty; and
4. Copy of tax payment form over income from real estate transfer to special purpose company or collective investment agreement.

New Provincial Minimum Wage in Jakarta and its Suspension Procedure

by Auraylius Christian

On 31 October 2016, the governor of Jakarta promulgated Governor Regulation No. 227 Year 2016 concerning the 2017 Provincial Minimum Wage ("**GR No. 227/2016**").

As stipulated in article 1 of GR 227/2016, the Provincial Minimum Wage (*Upah Minimum Provinsi* "**UMP**") in Jakarta has been raised to Rp. 3,355,750.00 (three million three hundred fifty five thousand seven hundred fifty Rupiah) per month. The figure is about eight percent higher than the 2016 UMP of Rp. 3,100,000.00 (three million one hundred thousand Rupiah). UMP is applicable for an employee who has less than 1 year working experience.

Payment of wages lower than the UMP is categorized as a criminal action and will be subjected to a criminal sanction in the form of imprisonment for 1 (one) year at the minimum and 4 (four) years at the maximum and/or a minimum fine of Rp. 100,000,000.00 (one hundred million Rupiah) and maximum Rp. 400,000,000.00 (four hundred million Rupiah).[1] An employer who cannot fulfil the UMP provisions may apply a UMP suspension to the governor through the institution responsible in employment affairs no later than 10 (ten) days after the date of GR No. 227/2016 entry into force next 1 January 2017. The unassigned Sectoral Provincial Minimum Wage (*Upah Minimum Sektoral Provinsi*) can be proposed and assigned later, based on an agreement between company association (*asosiasi perusahaan*) and labour union on a related sector.

Further technical requirements regarding the UMP suspension in Jakarta are set down in Governor Regulation No. 42 Year 2007 concerning Suspension Procedure of UMP Implementation ("**GR No. 42/2007**"). Pursuant to article 5 of GR No. 42/2007, a request for the UMP Suspension should not be conducted solely by the employer, but is based on a written consent between employer and employee or respective labour union. The requirements which need to be attached on the submission of a UMP suspension application are as follows:

(a) original script of written consent between employer and employee regarding the request for UMP suspension;
(b) financial statements consisting of a balance sheet, calculation of loss/profit along with an explanation within the last 2 (two) years (if the employer is a legal entity, the financial statements must be audited by a public accountant);
(c) copy of article of incorporation;
(d) wage/salary data based on working position;
(e) total number of employees entirely and total number of employees who have requested aUMP suspension; and
(f) production and marketing growth within the last 2 (two) years, and production and marketing plan for the next 2 (two) years.

Upon this request, the governor or head of the institution responsible for employment affairs may approve or reject the application[2] If the UMP suspension application is rejected, the employer is still required to fulfil the UMP provisions.

[1] article 90 clause (1) Jo. article 185 clause (1) of Law No. 13 Year 2003 concerning Manpower.

[2] article 11 GR No. 42/2007, for a company which has employee up to 1.000 persons will be decided by head of the institution responsible in employment affairs and for a company which has employee more than 1.000 persons will be decided by governor.

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