

Seeking Clarity in the Government's Recent Tax Incentives

Further to the issuances of the Regulation of the Minister of Finance No. 23/PMK.23/2020 on Tax Incentives for Taxpayers affected by COVID-19 ("**Regulation 23/2020**") and the Government Regulation in lieu of Law No. 1 of 2020 ("**Regulation 1/2020**"), the Director General of Taxes ("**DGT**") recently issued a FAQ (frequently asked questions) for both of these regulations, as well as the circular letter No. SE-19/PJ/2020 on the operative guidance of Regulation 23/2020 ("**Circular Letter**").

As the government is yet to issue the operating regulations for Regulation 23/2020 and Regulation 1/2020, these FAQ documents can be used as an initial point of reference by taxpayers.

We summarise the content of the two FAQ documents as follows:

Prevailing Tax Laws affected by Regulation 1/2020

We have already detailed some of the incentives granted under Regulation 1/2020 in our previous client update ([click here to read](#)). Based on the FAQ, Regulation 1/2020 affects the following prevailing tax laws:

1. Law on General Provisions and Procedures of Taxation;¹
2. Law on Income Tax Law;² and
3. Law on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.³

However, the FAQ does not specifically mention which provisions are affected by Regulation 1/2020.

Tax Cut for Corporate Taxpayers

No clarification yet to enjoy the additional 3% tax cut

While Regulation 1/2020 mandates that the criteria on the eligibility of listed companies to enjoy the 3% tax cut will be detailed further under a government regulation, the FAQ instead refers to the 5% cut of corporate income tax rate for listed companies as regulated under Government Regulation No. 77/2013 (which was incorrectly referred in the FAQ as Government Regulation No. 73/2013) on income tax cut for domestic corporate taxpayers publicly listed.

The following criteria must be satisfied in order for a listed company to enjoy the 5% tax cut:

¹ Law No. 6/1983, which has been amended several times and lastly by Law No. 16/2009.

² Law No. 7/1983, which has been amended several times and lastly by Law No. 36/2008.

³ Law No. 8/1983, which has been amended several times and lastly by Law No. 42/2009.

1. at least 40% of the listed company's paid-up capital must be traded in the Indonesia Stock exchange (IDX) and included in a collective custody in a depository and settlement agency;
2. the shares of the listed company must be owned by at least 300 parties, each holding less than 5% of the total shares; and
3. the requirements in points 1 and 2 must be satisfied within 183 calendar days in a tax year.

The eligibility for the additional 3% tax cut will be detailed further in a government regulation.

Article 25 income tax

The decrease in the corporate income tax ("CIT") rate will also affect the calculation of monthly tax instalments (often referred to as Article 25 income tax). By law, monthly tax instalments for a year are calculated based on previous year annual income tax return. If the 2019 annual income tax return uses the 25% CIT rate while the 2020 tax year will use the 22% CIT rate, the FAQ document confirms that the 22% CIT rate can be used to calculate the monthly tax instalment for 2020 from the month when the 2019 annual income tax return is submitted.

While the decrease in the corporate income tax rate under Regulation 1/2020 applies for domestic corporate taxpayers and permanent establishments that have to file their annual tax returns by the fourth month following the year-end e.g. 30 April 2020 deadline for the tax year ended 31 December 2019, the FAQ document states that the 22% corporate income tax rate can be used to calculate the 2020 monthly tax instalment from the month when the 2019 annual income tax return is submitted. Therefore, the tax instalment for March 2020 for any taxpayer who have not submitted their 2019 annual income tax return by March 2020 must follow the previous month tax instalment and their tax instalment for April 2020 will be based on the 2019 annual tax return with the new corporate income tax rate of 22%.

Taxpayers need to bear in mind that the FAQ is not binding as a regulation. Further, interpretation on the calculation of the March 2020 tax instalment for corporate taxpayers is not in line with Article 25(2) of the Income Tax Law, which requires the tax instalments for the months before the statutory deadline of annual income tax return filing to be equal to the tax instalment of the last month of the previous tax year. Therefore, the new 22% corporate income tax rate should only be used for tax instalments starting from April 2020 (instead of March 2020) and onward for corporate taxpayers whose tax year ended on 31 December 2019.

Tax on E-Commerce Sales from Foreign Merchant and Provider

The FAQ document does not provide further clarification of the tax treatment of e-commerce sales by foreign merchants, service provider or e-commerce provider. Interestingly, despite Regulation 1/2020 requiring a foreign e-commerce service provider that enters into an e-commerce transaction with a purchaser or consumer in Indonesia to collect, settle, and report the VAT payable, the FAQ document still refers to the current provisions of the VAT law, which instead requires the buyer or consumer of imported intangible taxable goods and services to collect, settle, and report VAT payable. There is no

clarification whether the buyer of consumer is still required to collect, settle and report the VAT if the VAT is already collected by the foreign merchant or provider.

The FAQ also refers to the business models under Government Regulation No. 80 of 2019 on Business Models of E-commerce Organisers to identify foreign merchants, providers, and e-commerce organisers to be subjected to the taxes. These include online retailers or traders having their own e-commerce medium, a marketplace or platform provision for traders to offer goods and/or services, an online classified ad that acts as a platform between a seller and a buyer to bridge a transaction that does not involve e-commerce, a price comparison platform and daily deals.

Significant Economic Presence

With regards to the addition of the significant economic presence criterion to determine a permanent establishment, the FAQ refers to the OECD Report of 2019, but no clarification is provided.

Highlights of the Circular Letter

The first point is that eligible taxpayers must notify or apply for the tax incentives to the DGT via the DGT's online system at <http://www.pajak.go.id> by uploading the requested documents. The DGT will then verify the notification or the application and issue a confirmation or a decision, depending on the types of incentives sought. For example, to enjoy the Article 21 Employee Income Tax facility, the taxpayer must obtain a notification from the DGT, while to receive the exemption of Article 22 import tax, the taxpayer must obtain a decision from the DGT in the form of an exemption letter (*surat keterangan bebas*).

For taxpayers having branch offices, each branch office must notify for the Article 21 Employee Income Tax facility separately. However, only the headquarter office can notify for a reduced corporate income tax rate for Article 25 income tax.

Another point is regarding eligible business sectors. The tax incentives under Regulation 23/2020 are only available to taxpayers engaging in certain business sectors. Therefore, the determination of the business sector is crucial. Pursuant to the Circular Letter, the following documents can be used to determine the business sector:

1. the 2018 annual income tax return, either in the form of a first filing or a revision that is made either before or after 1 April 2020;
2. the tax registry letter, for taxpayers registered after 2018;
3. the taxpayer's master file.

Lastly, the FAQ document confirms that the government will only bear the income tax of employees whose annual income does not exceed IDR 200 million. The component of this annual income includes the employee's permanent and regular income, which means that it excludes religious holiday allowance (*tunjangan hari raya*) and bonus but includes overtime.

Conclusion

It is likely that the government will issue more clarifications in the days to come, especially in light of the many tax incentives issued as a response to Covid-19. For now, we recommend that taxpayers tread lightly, especially with regards to incentives and facilities that still require further clarifications from the DGT.

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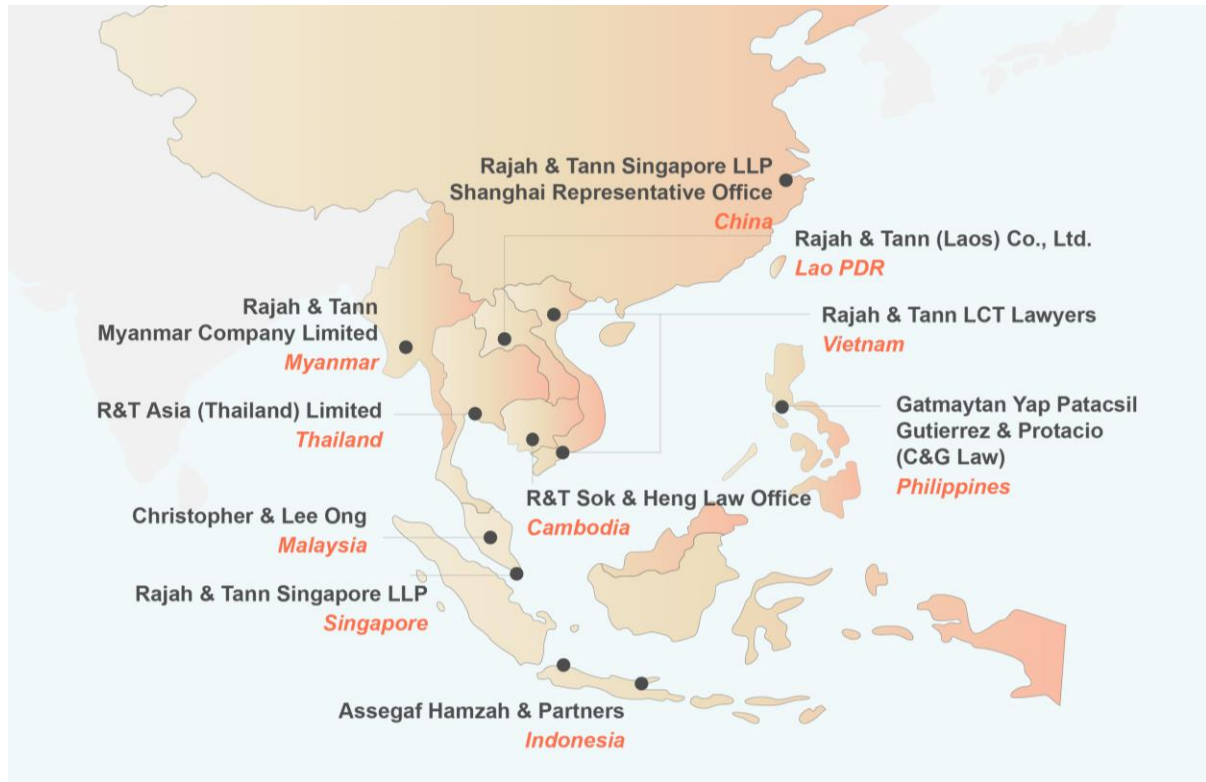
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