CLIENT UPDATE

18 NOVEMBER 2015

AHP Tax Group

Real Estate Investment Vehicles Recognized and Facilitated for First Time in Indonesia

The Minister of Finance has issued a new regulation (MOF Regulation No. 200/PMK.03/2015 - the "**New Regulation**") that formally recognizes, defines and affords favorable tax treatment for the first time to collective investment contracts (Kontrak Investasi Kolektif / "**KIK**") focused on real estate (the Indonesian equivalent of the real estate investment trust/REIT).

The key points of the New Regulation, which entered into effect on 10 November 2015, are as follows:

1. A "Real Estate Investment Fund" (Dana Investasi Real Estat / "**DIRE**") is defined as a "vehicle to collect funds from investors for subsequent investment in real estate and real estate-related assets, and/or cash or cash equivalents.
2. A "Special Purpose Company" ("SPC") is defined (for the purposes of the New Regulation) as a limited liability company whose share capital is at least 99.9 percent owned by a DIRE that is established in the form of a KIK ("KIK DIRE"), where such SPC is incorporated solely for the purpose of administering the said KIK DIRE.
3. An SPC established to administer a KIK DIRE shall be treated as an integral and inseparable component of the KIK DIRE. As a result, dividends received by a KIK DIRE from an SPC shall not be included in the calculation of the KIK DIRE's taxable income and dividends paid by an SPC to a KIK DIRE shall not be subject to Article 23 Income Tax.
4. The transfer of a real estate asset to an SPC or KIK DIRE shall not be construed as a conveyance of title to lands and buildings under Article 1(2) of Government Regulation No. 48 of 1994 and its amendments, and so shall not be subject to Income Tax under Article 4(2) of the Income Tax Law (under which transfers of property, land and/or buildings are normally subject to final tax at 5 percent of the transfer value). However, capital gains on a transfer of real estate to an SPC or KIK DIRE are still considered as taxable income for the transferor of the real estate and are thus subject to income tax charged at the normal rate.
5. An SPC or KIK DIRE is classified as a low-risk taxable enterprise (Pengusaha Kena Pajak / "**PKP**"). Therefore, an SPC or KIK DIRE is entitled to preliminary refunds on overpayments of Value Added Tax.

Paragraph 4 above means that if a loss is suffered by the transferor, no tax liability will arise. However, all in the garden is not rosy, particularly for investors or developers that purchased real estate assets before the property boom of the last few years significantly inflated their value. As the corporate income tax rate is 25 percent, the capital gain accruing to such investors must not exceed 20 percent if they are to benefit from the exemption from Article 4(2) of the Income Tax Law. If the capital gain exceeds 20 percent, then they will actually end up worse off if they transfer property assets to an SPC or KIK DIRE. As most of the longer established real estate players have seen capital gains of 30-40 percent on their property holdings over the last few years, they are likely to be unwilling to transfer such assets to a DIRE."

Contacts

Wibowo Mukti
Partner
Tax and Customs

D +62 21 2555 7861
F (62) 21 2555 7899
wibowo.mukti@ahp.co.id

Muslimin Damanhuri
Partner
Tax and Customs

D +62 21 2555 9952
F (62) 21 2555 7899
muslimin.damanhuri@ahp.co.id

Our Regional Presence

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP
9 Battery Road #25-01
Straits Trading Building
Singapore 049910
T +65 6535 3600 F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office
Vattanac Capital Office Tower, Level 17, No. 66
Preah Monivong Boulevard, Sangkat Wat Phnom
Khan Daun Penh, 12202 Phnom Penh, Cambodia
T +855 23 963 112 / 113 F +855 963 116
kh.rajahtannasia.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP
Shanghai Representative Office
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road
Shanghai 200021, People's Republic of China
T +86 21 6120 8818 F +86 21 6120 8820
cn.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited
Office Suite 007, Inya Lake Hotel No. 37, Kaba Aye
Pagoda Road, Mayangone Township, Yangon, Myanmar
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners
Menara Rajawali 16th Floor
Jalan DR. Ide Anak Agung Gde Agung Lot #5.1
Kawasan Mega Kuningan, Jakarta 12950, Indonesia
T +62 21 2555 7800 F +62 21 2555 7899
www.ahp.co.id
** Assegaf Hamzah & Partners is an independent law firm in Indonesia and a member of the Rajah & Tann Asia network.*

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.
Phonexay Village, 23 Singha Road, House Number 046/2
Unit 4, Saysettha District, Vientiane Capital, Lao PDR
T +856 21 454 239 F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong
Level 22, Axiata Tower, No. 9 Jalan Stesen Sentral 5,
Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia
T +60 3 2273 1919 F +60 3 2273 8310
www.christopherleeong.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN | *Thailand*

Rajah & Tann (Thailand) Limited
973 President Tower, 12th Floor, Units 12A-12F
Ploenchit Road, Lumpini, Pathumwan
Bangkok 10330, Thailand
T +66 2 656 1991 F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
Saigon Centre, Level 13, Unit 2&3
65 Le Loi Boulevard, District 1, HCMC, Vietnam
T +84 8 3821 2382 / +84 8 3821 2673 F +84 8 3520 8206

Hanoi Office
Lotte Center Hanoi - East Tower, Level 30, Unit 3003,
54 Lieu Giai St., Ba Dinh Dist., Hanoi, Vietnam
T +84 4 3267 6127 F +84 4 3267 6128
www.rajahtannlct.com

Based in Jakarta, and consistently gaining recognition from independent observers, Assegaf Hamzah & Partners has established itself as a major force locally and regionally, and is ranked as a top-tier firm in many practice areas. Founded in 2001, it has a reputation for providing advice of the highest quality to a wide variety of blue-chip corporate clients, high net worth individuals, and government institutions.

Assegaf Hamzah & Partners is part of Rajah & Tann Asia, a network of local law firms in Singapore, China, Lao PDR, Vietnam, Thailand and Myanmar, as well as associate and affiliate offices in Malaysia, Cambodia, Indonesia and the Middle East. Our Asian network also includes regional desks focused on Japan and South Asia.