
CLIENT UPDATE

2015 MAY 25

DISPUTE RESOLUTION

Ministry of Finance Issues New Regulations on Limited Tax Amnesty

Introduction

To help achieve the Government's 2015 tax revenue target of Rp 1,489.3 trillion (up Rp 342.5 trillion from actual tax receipts in 2014), the Ministry of Finance ("MOF") has announced a limited tax amnesty (commonly referred to in Indonesia as a "sunset policy"). To support the implementation of the limited amnesty, the MOF recently issued two new regulations that detail its scope, and the requirements and procedures for its application.

1. MOF Regulation No. 29/PMK.03/2015

This first regulation, which came into effect on 13 February 2015, provides an amnesty in respect of all of the administrative sanctions in the form of interest which are imposed if tax arrears arising from a tax assessment (or an additional tax assessment), or a decision on a taxpayer's objection, appeal or application for judicial review are not paid by the stipulated deadlines.

Under Article 19(1) of the the General Taxation Provisions Law ("**General Taxation Provisions Law**"),ⁱ interest penalties are imposed on unpaid or underpaid tax arrears at a rate of two percent (2%) per month from the stipulated deadline until the date of payment of the arrears, or the date of issuance of a tax collection letter, as the case may be.

The amnesty is only available where tax arrears arising prior to 1 January 2015 are paid in full by not later than 1 January 2016.

To avail of the amnesty, the taxpayer must submit an application for a waiver of the interest penalties to the Director General of Taxes ("DGT"), accompanied by the necessary documents and proofs. Upon fulfillment of all of the administrative requirements, the DGT will then issue a waiver determination.

2. MOF Regulation 91/PMK.03/2015

Under this second regulation on the limited tax amnesty, which came into effect on 4 May 2015, the DGT shall waive or reduce administrative sanctions imposed as a result of an omission or mistake on the part of the taxpayer. Thus, the facility is not available to taxpayers who deliberately engaged in tax evasion.

The administrative sanctions that may be waived consist of interest and penalties levied under certain provisions of the General Taxation Provisions Lawⁱⁱ in respect of:

- a. Late filing of annual income tax return for fiscal year 2014 or previous years, and/or monthly tax return for the month of December 2014 or previous months;
- b. Late payment or settlement of underpaid taxes payable based on an annual income tax return for fiscal year 2014 or previous years;
- c. Late payment or settlement of taxes payable based on a monthly tax return for the month of December 2014 or previous months;
- d. Higher tax payable resulting from a voluntary revision by a taxpayer of an annual income tax return for fiscal year 2014 or previous years, and/or monthly tax return for the month of December 2014 or previous months.

As with the first regulation (No. 29/PMK.03/2015), to avail of the amnesty, the taxpayer must submit an application to the DGT, accompanied by the necessary documents and proofs. Should all of the

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administrative requirements be fulfilled, the DGT will grant a waiver or reduction of the administrative sanctions, as the case may be.

AHP Commentary

This is not the first tax amnesty that Indonesia has staged in recent years. In 2008, a similar amnesty netted the Government windfall revenue of Rp 7.46 trillion, and brought 5,635,128 new taxpayers into the system.

In contrast with the 2008 tax amnesty, which provided an automated waiver of administrative sanctions, the 2015 amnesty requires the taxpayer to file an application to benefit from the limited tax amnesty, and at the same time provides the DGT with discretion whether to grant or not grant the waiver or reduction in administrative sanctions as per the taxpayer's application. Therefore, due to these additional procedures, the success of the program in achieving its objective, i.e., boosting 2015 tax revenues, is subject to doubt.

Further, as always in the case of tax amnesties, there is the danger of moral hazard. Compliant taxpayers that promptly paid the administrative sanctions on unpaid or underpaid taxes payable as a result of innocent mistake may well now be asking themselves whether they did the right thing. In addition, international researchⁱⁱⁱ shows that tax amnesties normally succeed in times of growing economic prosperity, such as 2008 in Indonesia, when the economy finally emerged strongly from the dislocation caused by the Asian economic crisis of 2008/2009.

By contrast, amnesties have generally proved to be unsuccessful in times of economic uncertainty – after all, if the very survival of a company is in jeopardy due to economic turbulence, it may well be less willing to settle its back taxes than in a time of economic prosperity. Given the current state of the Indonesian economy, the DGT will need, at a minimum, to work hard to ensure that the amnesty is administered transparently and impartially if it is to succeed.

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- (i). *Undang-undang No. 6/1983 tentang Ketentuan Umum dan Tata Cara Perpajakan* (Law No. 6/1983 on General Taxation Provisions and Procedures).
 - (ii). Articles 7, 8(2), 8(2a), 9(2a), 9(2b) and 14(4) of the General Taxation Provisions Law.
 - (iii). See *A Tax Amnesty in the Context of a Developing Economy*, Pinaki Bose & Michael Jetter (https://research.stlouisfed.org/conferences/moconf/2010/Amnesty_Paper_Feb18.pdf)

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