

CLIENT UPDATE 26 OCTOBER 2016

TAX & CUSTOMS

Government Cuts Income Tax on Real Estate Transfers to REITs to 0.5%

Further to the Government's eleventh economic stimulus package, which was launched on 29 March 2016, a new Government Regulation¹ was issued on 17 October 2016 (the "New Regulation") to reduce the income tax chargeable on the transfer of real estate to a designated Collective Investment Contract (*Kontrak Investasi Kolektif* / "**KIK**") focused on real estate (the Indonesian equivalent of the real estate investment trust / "**REIT**") to 0.5% final tax from the previous normal income tax rate of 25% for corporate transferors or progressive tax of up to a maximum of 30% for individual transferors.

Notwithstanding that Real Estate Investment Funds (*Dana Investasi Real Estat* / "**DIRE**") were recognized and defined for the first time in late 2015 by Ministry of Finance Regulation No. 200/PMK.03/2015, real estate players had serious concerns as the normal 25% corporate income tax rate and individual taxpayer progressive tax of up to a maximum of 30% continued to be charged on income arising or accruing from a transfer of real estate to a DIRE scheme (see *AHP Client Update* of 18 November 2015).

The New Regulation once again adopts a final tax regime, but cuts the final tax chargeable on income derived by the taxpayer from a transfer of real estate to a Special Purpose Company ("**SPC**") or a designated real estate KIK scheme ("**KIK DIRE**") to 0.5%. This is significantly lower than the generally prevailing final tax rate of 2.5% on normal transfers of lands and/or buildings under Government Regulation No. 34 of 2016 (which reduced the previous final tax rate from 5%, effective from 7 September 2016).

The key points of the New Regulation, which came into effect on 17 October 2016, are as follows:

1. Income that is received by or accrues to a taxpayer as a result of a transfer of real estate to an SPC or KIK DIRE is subject to 0.5% final tax on the gross transfer value of the real estate. If the transfer is between related parties the transfer value is the total amount that should be received by the transferor based on the fair market price of the real estate or based on the determination of an independent appraiser. However, if the transfer is between unrelated parties, the transfer value is the total actual amount received by the taxpayer from the real estate transfer. The transfer may be made by means of sale-purchase, exchange (including *ruislag*), an assignment-of-title agreement (*perjanjian pemindahan hak*), a relinquishment of title (*pelepasan hak*), a delivery of title (*penyerahan hak*), a grant (*hibah*), or by such other means as may be agreed upon by the parties.
2. The final tax must be paid by the taxpayer transferring the real estate prior to the relevant deed, decision, agreement, or contract for the transfer of the real estate to the SPC or KIK DIRE being signed by the competent officer, i.e., notary, land deed official (*Pejabat Pembuat Akta Tanah* / "**PPAT**"), district head (*Camat*), or other competent official.
3. A taxpayer transferring real estate that is subject to the 0.5% final-tax rate is required to:
 - a. submit to the tax office where which it is registered (1) a copy of the notification issued and legalized by the Financial Services Authority (*Otoritas Jasa Keuangan*/"**OJK**") on the registration and effectiveness of the relevant KIK DIRE; (2) OJK confirmation that the real estate is being transferred to an SPC or KIK DIRE; (3) a declaration over a Stamp Duty from the taxpayer confirming that the real estate has been transferred to an SPC or KIK DIRE; and (4) a copy of the Tax Deposit Slip evidencing the payment of the final tax due; and
 - b. obtain a Fiscal Certificate (*Surat Keterangan Fiskal*) from the head of the Tax Office where the taxpayer is registered.

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4. The competent official authorized to sign the deed, decision, agreement or contract may only do so if it is proved that:
 - a. The final tax has been paid, as evidenced by a copy of the Tax Deposit Slip, which should be verified against the original; and
 - b. The taxpayer's obligations, as referred to in section 3 above, have been fulfilled, as evidenced by copies of the relevant documents, along with photocopies of receipts evidencing their delivery to the tax office where the taxpayer is registered.
5. For supervision purposes, a competent official is required to submit report on deeds, decisions, agreements, or contracts that are issued in relation to transfers of title to lands and/or buildings to the Director General of Taxes.

The Ministry of Finance is expected to issue further regulations setting out the detailed procedures for making final tax payments, filing the documents in section 3 above, and reporting by competent officials. Real estate developers and investors are also hoping that local governments will reduce the duty on the acquisition of land and building titles (*Bea Perolehan Hak atas Tanah dan Bangunan* / "BPHTB") from the current maximum rate of 5% to 1%, in line with the Government's eleventh economic stimulus package, which was launched seven months ago. It is to be hoped that the total tax burden on income from Indonesian REITs will ultimately be reduced to 1.5%, as promised in the stimulus package, as this would finally place Indonesian REITs on a competitive footing with their Singaporean counterparts.

- i. *Government Regulation No. 40 of 2016 on Tax on Income from the Transfer of Real Estate under a Designated Collective Investment Contract Scheme*

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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