DDTC
Sets the Standards and Beyond

UPDATE ON NEW TAX HOLIDAY REGIME IN INDONESIA



In the effort to strengthen one of the main functions of fiscal policy as covered in Indonesian Macroecomic Framework (*Kerangka Ekonomi Makro*), namely the function of stabilization, the Government of Indonesia pursues the policy through the provisions of fiscal incentives for strategic economic activities. One of them is through the provisions of Tax Holiday.

Minister of Finance (MoF) of Republic of Indonesia has issued the most updated policy on Tax Holiday dated 29 March 2018 namely MoF Regulation No.35/PMK.010/2018 ("PMK 35/2018"). Prior to today's regime, Tax Holiday policy was initially implemented as of August 2011 in the era of President Susilo Bambang Yudhoyono (SBY) through MoF Regulation No. 130/PMK.011/2011 ("PMK 130/2011") as amended by MoF Regulation No. 192/PMK.011/2014 ("PMK 192/2014"). However, this initial regulation was then revoked by the issuance of MoF Regulation No.159/PMK.010/2015 ("PMK 159/2015") as amended by MoF Regulation No.103/PMK.010/2016 ("PMK 103/2016").

Important Changes

PMK 35/2018, which has come into effect as of 4 April 2018, provides beneficial tax treatment for Pioneer Industry. Previous requirements such as tax sparing and placement of fund in national banking regulated in the previous regulations are now non-existent in PMK 35/2018. Comparison of regulation schemes of Tax Holiday facilities listed in Table 1.

Who Are Eligible to Apply?

In PMK 35/2018, the criteria and requirements for applicants are regulated in Article 3. Paragraph (1) of this Article states that the applicant should be a Pioneer Industry and has the status as an Indonesian legal entity with new capital investment at a minimum of IDR500 Billion before the starting time of commercial operation. The commencement of commercial operation refers to the timing when products of the main business activity (*Kegiatan Usaha Utama*) are sold to the market and/or utilized by its own entity for further production process for the first time.

In terms of financial matters, applicant should fulfill the requirement of Debt to Equity Ratio (DER) as stipulated in MoF Regulation No.169/PMK.010/2015 ("PMK 169/2015"). Moreover, applicants must have not previously obtained the decision or notification regarding the rejection of CIT reduction by the MoF. In addition,

UPDATE ON NEW TAX HOLIDAY REGIME IN INDONESIA

Table 1 - Comparison Between the Old and New Regime

Key Feature	PMK 159/2015 – PMK 103/2016	PMK 35/2018	
Eligible Entities	New taxpayer	New capital investment (existing and new taxpayer)	
Percentage of Coorporate Income Tax ("CIT") Reduction	10% - 100%, and 50% for telecommunication and IT industried introducing high-technology	100%	
Time Period of Tax Holiday	5 to 15 years, can be extended to 20 years based on MoF's discretion.	5 – 20 years with term consideration based on value of capital investment with transition phase of 50% CIT reduction for two years after the facility ends.	
		Term Periond (Years)	**Planned Capital Investment Value (IDR)**
		5 years	500 Billion – 1 Trillion
		7 years	1 Trillion – 5 Trillion
		10 years	5 Trillion – 15 Trillion
		15 years	15 Trillion – 30 Trillion
		20 years	More than 30 Trillion
Industry Coverage	8 pioneer industries	17 pioneer industries	

Article 3 Paragraph (5) states that if the shareholders are domestic taxpayers, they must have obtained Tax Clearance Certificate from the Directorate Genteral of Tax ("DGT") as evidence of fulfilling their tax obligation.

17 sectors classified as Pioneer Industry that can be granted with Tax Holiday as stated in Article 3 Paragraph (2):

a. integrated upstream basic metal;
b. integrated oil and gas refinery;
c. integrated petrochemicals from oil, gas, or coal;
d. integrated inorganic basic chemicals;
e. integrated organic basic chemicals from agriculture, plantation, or forestry products;
f. integrated pharmaceutical raw materials;
g. semi-conductor and other main components of computers which are integrated with computers manufacturing;
h. main components of communication equipment which are integrated with smartphones manufacturing;
i. main components of health equipment which are integrated with irradiation, electro medical, or electrotherapy manufacturing;
j. main components of industrial machinery which are integrated with machinery manufacturing;
k. main components of machinery which are integrated with motor vehicles manufacturing;
l. robotics components which are integrated with manufacturing industry;
m. main components of vessels which are integrated with vessel manufacturing;
n. main components of aircrafts which are integrated with aircraft manufacturing;
o. main components of trains which are integrated with train manufacturing;
p. power plant machinery; or
q. economic infrastructure.

Details of each pioneer industry, together with its main business activity, will be stipulated further in Indonesia Capital Investment Board ("*Badan Koordinasi Penanaman Modal/BKPM*") regulation.

However, Article 5 states that business sectors outside the scope may apply for tax holiday should they be able to prove themselves as Pioneer Industry. Accordingly, applicants should state their business fulfills the definition of Pioneer Industry. Pioneer Industry is defined under Article 1 as an industry with important charateristics for economy: a) has broad linkage with other sectors, b) provides high added value and externality, c) introduces new technology, and 4) has strategic value for the national economy. Following the submission, interdiscussion between MoF and related Ministry(ies) coordinated by BKPM will be conducted to determine the compatibility of main business activity to Pioneer Industry criteria as stated in Article 1.

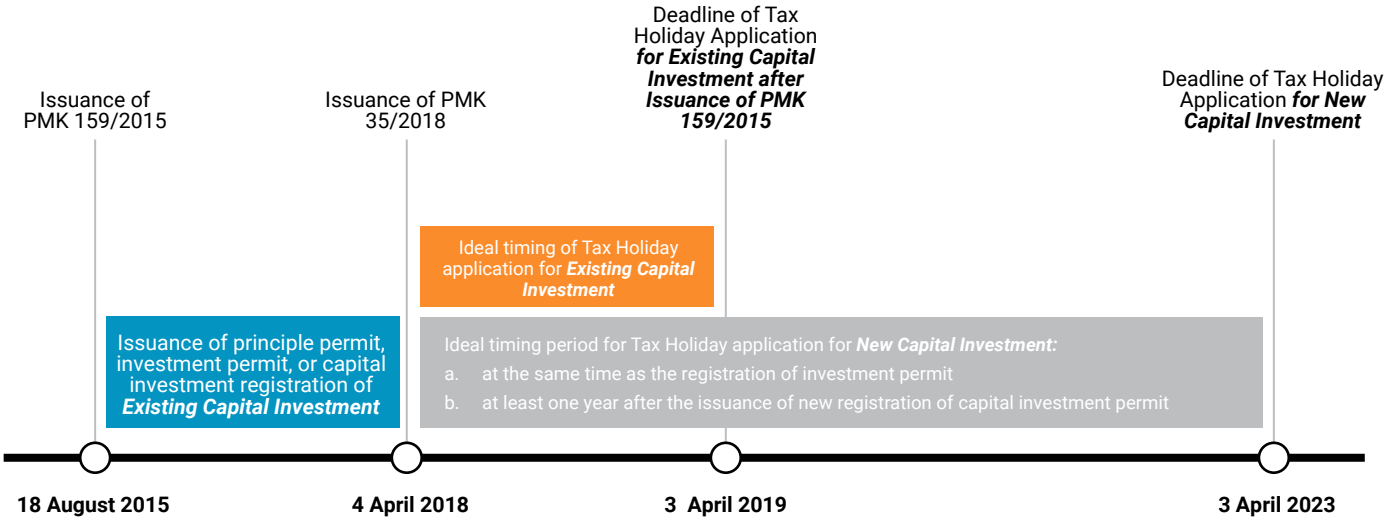
Timeline of Tax Holiday Application Based on PMK 35/2018

Application period for the application can be categorized into two categories as follows:

a. For new capital investment, application period refers to Article 4 Paragraph (1). Deadline for application is within a period of five years after the effective date of the regulation. Application for Tax Holiday should be made prior to the of start commercial production, either together with the application for new capital investment or at a maximum within a year after the issue of investment approval.

b. For business with existing capital investment whose issuance of principle permit (*izin prinsip*), investment permit (*izin investasi*), or capital investment registration (*pendaftaran penanaman modal*) was conducted after the effective date of PMK 159/2015, the application period refers to Article 16 Paragraph (4). Deadline of the application is one year after the issuance of PMK 35/2018.

Figure 1 - Timeline of Tax Holiday Application Based on PMK 35/2018



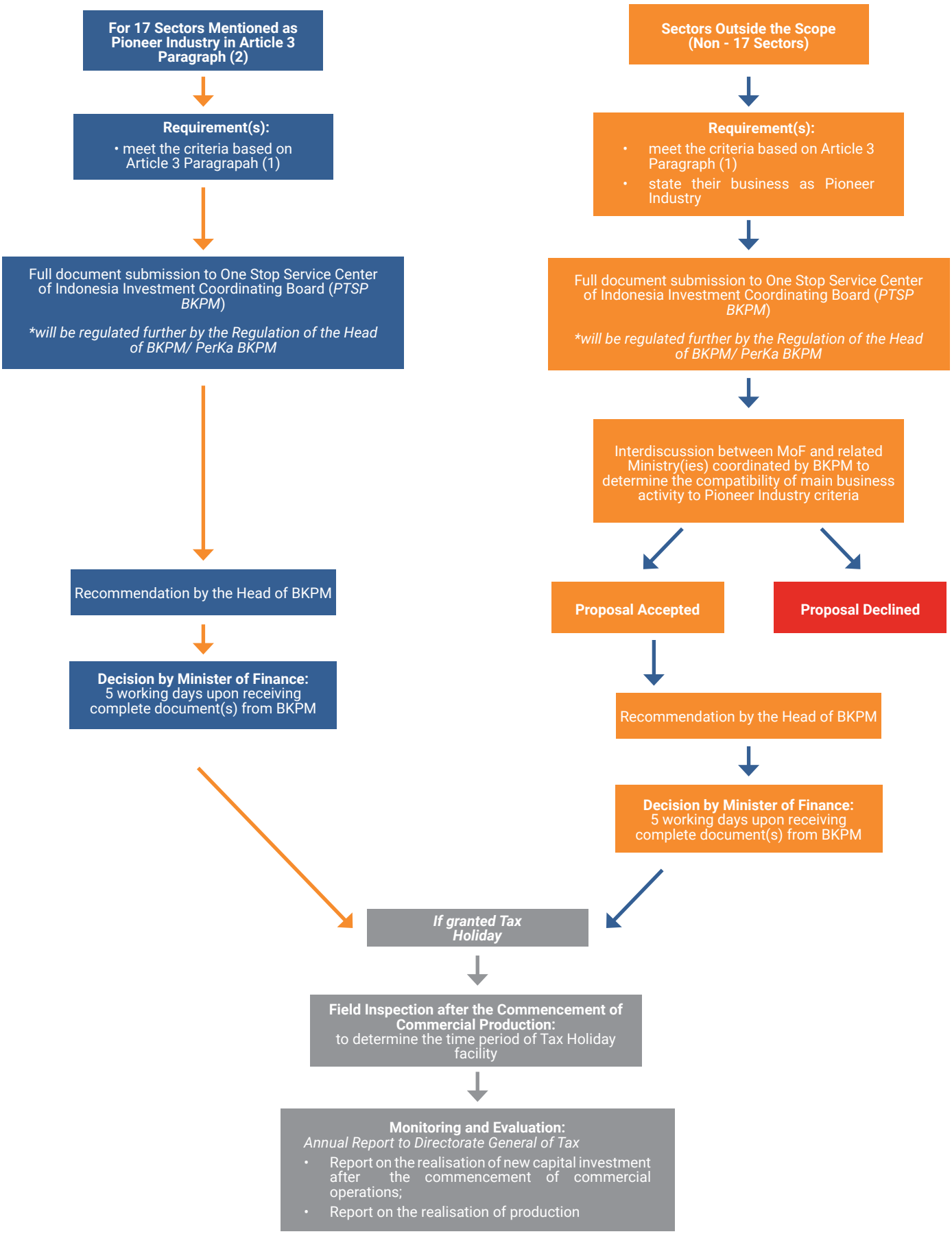
Further, there are some transitional provisions regulated in Article 16, as follows:

a. Taxpayers that were already granted with the Tax Holiday facility based on the previous regulations (PMK 130/2011 and PMK 159/2015) can continue to use the facility until the end of previous decision period.
b. Proposal submission after 16 August 2015 but no notification has been given will be processed based on PMK 35/2018.

Procedure of Enforcement and Enactment of Tax Holiday

The schemes as ilustrated at Figure 2 below elucidate the guidelines for applying Tax Holiday facilities based on PMK 35/2018. The figure will explain two types of procedures of Tax Holiday submission. First procedure ilustrates for 17 business sectors classified as Pioneer Industry as mentioned in Article 3 Paragraph (2). Second procedure is for other sectors outside the scope of those 17 industries.

Figure 2 - Guidelines for Applying Tax Holiday Based on PMK 35/2018



Revocation of Tax Holiday Privilege

After the approval of Tax Holiday, the facility granted to the taxpayer can be revoked should one or more of following conditions occur:

a. realisation value of the investment plan at the commencement of commercial production is below IDR 500 Billion;
b. realisation and the initial main business activity plan are not compatible based on the field inspection;
c. taxpayer import or buy second-hand capital goods which are subject to the reduction of CIT, unless they are fully relocated as a complete package of new investment from other countries and the goods are not locally produced, and/or based on the government's instruction to implement national strategic projects;
d. real main business activity is not in line with the registered main business activity plan
e. there is transfer of assets or ownership change during the concession period, except if the new asset is more productive and does not lessen the investment value;
f. the new capital investment is relocated to another country(ies).

If any of these cases occur, the sanctions will be as much as the value of Tax Holiday facility that has been untilized along with penalties. Specifically, for the revocation, when the realisation value of investment plan which is below IDR500 Billion but the realisation of the main business activity is consistent with the plan, the government will then offer another kind of tax facility for the taxpayer with applied terms and conditions.

To conclude, as the previous regulation did not significantly benefit many business sectors, the new formula of Tax Holiday regime provides more certainty. Not only does it provide legal certainty, this regime also simplifies the procedures and facilitates investment to boost real economic growth.

CONNECT WITH US:
With just one click

AUTHORS:
Click the author's picture to view their Curriculum Vitae



B. Bawono Kristiaji, S.E., M.S.E., M.Sc., ADIT
Partner, Research and Training Services at DDTC
contact: kristiaji@ddtc.co.id



Denny Vissaro, S.E., M.S.E., M.A.
Fiscal Economist, Research and Training Services at DDTC
Contact: denny@ddtc.co.id

DDTC

Menara satu sentra Kelapa Gading
6th floor Unit #0601 - #0602 - #0606
Jl Bulevar Kelapa Gading LA3 No.1
Summarecon, Kelapa Gading, Jakarta Utara 14240 - Indonesia
Phone: + 62 21 2938 5758 I Fax: + 62 21 2938 5759

The authors would like to thank Darussalam (Managing Partner at DDTC), Danny Septriadi (Senior Partner at DDTC) for their valuable input, insight and constructive discussions.

The information herein is for general purposes only and is not intended to address the circumstances of any particular individual or entity. This content should not be used as reference for consultation with professional advisors.

© 2018 DDTC is a research and knowledge based taxation institution and a centre of a number of taxation business activities units with high standards, consultation services, a center for review and research, taxation journals, a training centre, a provider of tax law documents, a library, and taxation news portal.

We were established in 2007 by Indonesian well known taxation experts, Darussalam and Danny Septriadi. Our team consists of multidisciplinary specialists, professionals, experts, and researchers.